

JUSTICE

IN THE EYE OF ISLAM
(Laws in Islam Versus English Laws in Bangladesh)

A Comparative Study of the Quranic Law
(Divine Law) And the Penal code (English Law) in 1860

MUFTI ALLAMA DR. SAYED NAZRUL ISLAM

Bismillahir Rahmanir Rahim

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(Divine Law) and the Penal code (English Law) in 1860**

MUFTI ALLAMA DR. SAYED NAZRUL ISLAM
(HEROIC FREEDOM FIGHTER, SECTOR-9)
Liberation War of Bangladesh, 1971

Mullick Brothers

JUSTICE IN THE EYE OF ISLAM

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Dedicated-

To The Peoples of the World.

"We did indeed make thee a vicegerent on earth: So judge thou between men in Truth and Justice. (Sura Sad 26). He has set up the Balance of justice in order that ye may not transgress (due) Balance (Sura Ar-Rahman 8). So establish weight with justice and fall not short in the Balance." (Sura Ar-Rahman 7-9).

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ACKNOWLEDGEMENT

BANGLADESH PARLIAMENT

Bismillahir Rahmanir Rahim

This is a unique book in Islam as it elaborates, in detail, Justice in the eye of Islam (Laws in Islam Versus English Laws in Bangladesh). A comparative study of The Quranic Law (Divine Law) and the Penal code. This is a timely publication of such a valuable book. It will illuminate people irrespective of cast and race to understand the value of human beings and to know in depth the graciousness of Allah.

Mufti Allama Sayed Nazrul Islam Faridpuri (Bangladesh) compiled this book with beautiful commentary on each & every aspect of this invaluable piece of illuminating book. Mufti Sayed Nazrul Islam Faridpuri has many books at his credit for the expansion of Islamic activities. He comes of a respectable Muslim family. His father Al-Sayed Bazlur Rahman was an exceptionally pious and dedicated Muslim. We are extremely grateful to Allah to the best such knowledge, intelligence and precision into him. The timely publication of “Justice in the eye of Islam” is likewise another step forward to illuminate the human race to understand precisely the meaning of truthfulness and righteousness of surrendering oneself to the will of Allah.

The purpose of this book is to open up the vast field of Quranic law and the Penal Code before the general reader.

Although the language of the book is English, the author has endeavoured his best to collect the required materials for the book from all possible and available sources which are systematically arranged.

Finally, I would like to convey the message to the reader that the aim of this book is to arouse interest in such a vast field. The interested reader, I hope will be highly benefited.

(Sheikh Hasina MP)
Former Prime Minister,
Leader of the Opposition
Bangladesh Parliament &
President, Bangladesh Awami League
(in the year 2002 AD)

FOREWORD TO THE FIRST EDITION

Bismillahir Rahmanir Rahim

I solicit the blessing of ALLAH and send my salutation of peace for the noble prophet (sm.) and his companions and for those who follow him upholding & formulating the cause of right religion.

THE JUSTICE IN THE EYE OF ISLAM' has been written by Mufti Allama Sayed Nazrul Islam. It is a comparative Study of the Quranic Law (Divine Law) and Penal Code. I'm highly impressed with the conceptions, analyses and comparison that he has shown in some important Islamic Judicial Laws with those of the present Penal Code. This is the appropriate method to awake the sleeping Muslim Ummah. I congratulate him whole heartedly and also inspire him to write & research more & more as 'A pen is mightier than the sword'. The purpose of this book is to open up to the general reader the vast field of Quranic Law & Penal Code. I wish the vast publication of this book. The Holy Quran is a complete code & conduct of life which indicates the best way of life. The Quranic law is the only law, which can ensure the fair justice and administration.

We repeatedly show our solemn gratitude to the Almighty who in His infinite mercy gave us strength to come up to the expectation of Muslim Ummah.

Maulana Md. Sharful Amin
Maulanabag, Bashirhat, West Bengal
India.

COMMENTS OF AUTHOR

(To the first edition)

"Justice in the eye of Islam," those who have encouraged and cooperated me to write this book are the reverend-

The honourable Imam (Sheikh Saleh Bin Humayed) Makkah's Grand Mosque, true language for people of the world. He prayed this book for every places of the world.

Then the Former Prime Minister, Leader of the Opposition, Bangladesh Parliament & President, Bangladesh Awami League 'Sheikh Hasina'.

Hazrat Maulana Md. Sharful Amin, Maulanabag, Bashirhat, India. (The grand son of Maulana Ruhul Amin (Maulanabag, Bashirhat, India) who was the main Khalifa of Hazrat Abu Bakar Siddique (R.A) Al-Quraishi, (Furfura Sharif, India).

Md. Nazrul Islam Khan B.Sc (Hons.) 1st class 1st, M.Sc (1st Class 1st), Fromar PS to the Hon'ble Prime Minister, Sheikh Hasina.

Hafiz Ruhul Kuddus always gives sermon for all the people of the world on genuinity, justice and truth and prays for the very book sitting in the prayer at holy places of Makkah & Madina.

S.M Mobarak Hossain (B.Sc. MA. B.Ed), Senior Teacher, Kashinathpur Abdul Latif High School, Pabna, Bangladesh.

A.K.M Shamsul Hoque, MA (English) B.Ed, Senior Teacher, Department of English, BAF Shaheen College, Dhaka, Bangladesh.

I am grateful to those who have helped me to write this book and hope that the Quranic Laws will be settled in the world instead of man made law. Only the Laws of the Holy Quran

can bring Peace in the Universe. Oh Allah grant my prayer. Ameen.

The names of all the Islamic thinkers and Muslim scholars whom I have been associated with in my education and learning. Their names are as follows: Oh Allah grant my prayer. Ameen.

Names of the Scholars in abroad:

- Ayatullah Ruhullah Khomeni of Iran
- Peer Kebral Late Abdul Hye (R), Furfura Sharif
- Abu Zafar Saheb (R), Furfura Sharif
- Moulana Sharful Amin (R), The grand son of Allama Ruhul Amin (R), Bashirhat
- Principle Kari Md. Taiyab (R), Principal (Khatib) Darul Ulum Deoband Madrasah
- Hossain Ahmed Madani, Deoband, India
- Mazharul Islam, Darul Ulum, Deoband, India
- Imam Shaikh Ibrahim, Khatib Abdul Qader Jilani (R), Bagdad, Iraq
- Imam Sheikh Abdullah, Karbala Jame Masjid, Iraq
- Imam Sheikh Abdullah, Khatib Jame Masjid of Yemen
- Khatib Abdullah Jame Masjid, Jameul Azhar, Egypt.
- Khatib Sheikh Abdur Rahman, Jame Masjid Adjacent Tur Pahar (Tur-e-Senai).
- Khatib Humaidi Abdus Salam, Palestine Jame Masjid
- Imam Al Suraim Abdullah, Jame Masjid, Bethelham (Baitul Muqaddas)
- Khatib Allah Suraim bin Hasan, Syria Jame Masjid (Minar Masjid) in Syria.

- I am also grateful to A K Borhanuddin, Commissioner of Taxes (Retd.), The National Board of Revenue who is committed to edit this book by the help of Atiqur Rahman, CEO, VectoRas and others.

Editor's Note

I got an opportunity to make welcoming the verses narrated by Dr. Allama Sayed Nazrul Islam in his book 'Justice in the Eye of Islam' is a unique book on Islamic Law, Allah Ta'ala has challenged the revelation of the Qur'an Himself, and since no lawyer in the world or anyone else has taken up the challenge, there is no way to change these verses of the Holy Quran. So we have no way but we must obey Allah's law and follow it.

Alhamdulillah. I will humbly say that I am as an ignorant of Islamic knowledge. Yet how I have been entrusted with the task of editing the comprehensive book "Justice in the Eye of Islam", I think it is Allah's gracious on me I would like to mention two things in particular here.

1. Jurist, an Islamic thinker and author of hundreds of books of law, a resident of Padma Mahal, 5/7 Ghaznabi Road, Mohammadpur, 1998, weeps at the dinner table one afternoon. I asked from there if Nana was having a hard time. He said, "I would go to Singapore next month; Nishad will take me." Nishad- who is Professor Dr. Ainun Nishad but I don't think I can finish the book of statutory Islamic law. Which is extremely important. He went to Singapore in May after being diagnosed with pancreatic ulcer and diagnosed with heart problems. He first returned to Bangladesh in June after undergoing treatment for pancreatic ulcer. Then again a month later when he went to Singapore again in July for heart treatment he had heart surgery. But from there he returned to Bangladesh unconscious. And after a few weeks of fighting death, the artificial respiration was opened on August 12th. He fell on the journey of Mahaparpar. That is to say, he had the idea - with tears in his eyes that the Statutory Islamic Law Statutory Board was headed by the Islamic Foundation Bangladesh as the chairman of that board.

Second: When Allama Syed Nazrul Islam, the Mufti of the Qur'an, the internationally renowned Islamic scholar and commentator, said, "Brother, you should re-edit my book 'Justice of the Islam'." I wrote this book with a lot of hard work. If we accept that the Qur'an that my great God has given to the world, Subhanallah, is a great blessing for this human race and we are judging it by the penal code by John McLean in 1960, then the greatest prophet and messenger Muhammad SAW 1400 years ago. On top of this, why don't we believe that the heavenly book, the Qur'an, was sent down to judge all the deeds of the human race on earth; With this he wept bitterly. The cries of these two men gave me two messages. : 1. Gazi Shamsur Rahman (recipient of Ekushey Padak) has recorded three huge volumes on 511 Penal Code section with Illustration, Commentary, Principal, Practice, Case History. Which is over 7000 pages - a great incomparable workload. It was published between July and November 1990. Needless to say, when a legendary judge (District and Sessions Judge) with a colorful life, as a jurist, cries out in agony over the mental power to keep Islamic law unfinished in time, the importance of Islamic law can only be realized by actively studying the Qur'an and Hadith. .

2. Needless to say, there are very few books on statutory Islamic law in Bangladesh. Therefore, the Islamic Foundation Bangladesh took the initiative to prepare a suitable book on this subject in the light of the needs and social needs of the age. The book titled 'Statutory Islamic Law' is the result of that initiative by the statutory Islamic board scholars Gazi Shamsur Rahman, A Z M Shamsul Alam, Shah Abdul Hannan, Moulana Ubaidul Haq, Moulana Mohammad Musa, Moulana Md. Mozammel Haq under the authority of Islamic Foundation Bangladesh. (But unfortunately Gazi Shamsur Rahman died on 12th August

in 1988 and after that the compilation of this statutory Islamic law book could not flourish successfully as before).

In compiling this book by the above board members including eminent jurists, Islamic thinkers and leading ulama of Bangladesh have given their valuable time, talent and labor. We are grateful to them for their works. With the publication of the rare book Justice in the Eye of Islam is also a comparative study between penal code and Islamic Law is greatly appreciated by the Scholars those have recommended its perception of the country and overseas.

3. Allama Dr. Syed Nazrul Islam - For forty years of his life he studied extensively on Islamic subjects, especially the Qur'an and Hadith, and later taught on this subject for many years. Didn't stop after retirement. It researched at a steady pace and also created appeal among its millions of listeners in different countries of the world. When he cries out for the introduction of Islamic law, recites various verses from the Qur'an, cries out in reviewing the lives of the Companions who preserve the Hadith, it is foolish, like the deaf, to look into their eyes and see how valuable this Qur'anic law is to human life. It is impossible for an ignorant person like me to express.

4. I realize that the verses narrated by Dr. Allama Sayed Nazrul Islam in his book 'Justice in the Eye of Islam' is a unique book on Islamic Law, Allah Ta'ala has challenged the revelation of the Qur'an Himself, and since no lawyer in the world or anyone else has taken up the challenge, there is no way to change these verses of the Holy Quran. So we have no way but we must obey Allah's law and follow it.

It is a great work no doubt. But as an unskillful, inexperienced and ignorant man, I apologize for any errors and omissions in the editing of this book.

Speaking of publishers

Allah, the Almighty, has given the best of creation to the best of human beings some laws which they can follow in every field of life for the benefit of this world and the hereafter. It is a matter of regret that as a result of social evolution at the national and international levels, people have abandoned the benevolent rules and regulations given by Allah and followed man-made laws. This law, which is the brainchild of the human brain, is corrupting the society and bringing disaster and destruction (without proper application). The Quranic laws (Divine Law) and man-made laws can never be equal. Practically man has not followed the law given by Allah because of the limitations of his knowledge, he has avoided it; Even opposing. As a result, the desired peace or welfare did not come in the family, social, national and international spheres. On the contrary, the whole world is sinking into the abyss of degradation and degradation. Despite this, secular and Western intellectuals and jurists have not hesitated to label (The Quranic Law, Divine Law) Islamic law as "medieval." In fact, the main reason for this is their ignorance and ignorance about the welfare of Islamic law.

In this context, it is imperative that the welfare laws of Islam be properly disclosed nationally and internationally. The author is a re-noued international scholar in Quranic research named Mufti Allama Dr. Sayed Nazrul Islam. He is also a heroic freedom fighter in 1971 our great liberation war. I appeal to the readers and if they appreciate of the book in learning about Islamic law I will be ever grateful to them and of course the book will be as popular as ever to the people as they seek the necessity of this unparalleled book.

Alhamdulillah! The idea of writing a comprehensive "Justice in the Eye of Islam" on comparative study of the Quranic law

(Divine law) and the penal code was proposed to publish from my beloved friend, former Commissioner of Taxes (NBR) A K Borhanuddin a couple of month ago and agree to print this book from 'Mullick Brothers'.

The copyright of the book is limited to the author. He asked me to publish this comprehensive book as a courtesy copy without selling it. This proposal is undoubtedly great significant.

Shahidul Hasan Mullick

Mullick Brothers

42 Bangla Bazar

Dhaka-1100.

Why is the Justice in the Eye of Islam by the Author

1. The Quran was revealed on Prophet and Rasul Mohammad (Sm)

Allah for the guidance of mankind, His beloved Muhammad (Sm). The Qur'an has been revealed on Prophet and Rasul Mohammad (Sm).

This is the Book about which there is no doubt, a guidance for those conscious of Allah. 2:2

Deaf, dumb and blind - so they will not return [to the right path]. 2:18

And if you are in doubt about what We have sent down upon Our Servant [Muhammad], then produce a surah the like thereof and call upon your witnesses other than Allah, if you should be truthful. 2:23

And you had already known about those who transgressed among you concerning the sabbath, and We said to them, "Be apes, despised." 2:65

Note: Literally, "those who have taqwa," i.e., who have piety, righteousness, fear and love of Allah, and who take great care to avoid His displeasure.

2. The call for justice

Those who do not judge according to the provisions of Allah's Qur'an, those who disobey, first of all they are disbelievers and transgressors.

And whoever comes with an evil deed - their faces will be overturned into the Fire, [and it will be said], "Are you recompensed except for what you used to do?" 27:90

Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing. 4:58

Indeed, We sent down the Torah, in which was guidance and light. The prophets who submitted [to Allah] judged by it for the Jews, as did the rabbis and scholars by that with which they were entrusted of the Scripture of Allah, and they were witnesses thereto. So do not fear the people but fear Me, and do not exchange My verses for a small price. And whoever does not judge by what Allah has revealed - then it is those who are the disbelievers. 5:44

And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers. 5:45

And let the People of the Gospel judge by what Allah has revealed therein. And whoever does not judge by what Allah has revealed - then it is those who are the defiantly disobedient. 5:47

3. Those who do not understand the judgment of the Holy Words of the Quran are the deaf and blind. Allah Himself has challenged here but no lawyer or anyone else in the world has challenged it. The Holy Qur'an says that if people have any doubt about the Qur'an which Allah has sent down to His beloved Messenger, they should write a book.

And if you are in doubt about what We have sent down upon Our Servant [Muhammad], then produce a surah the like thereof and call upon your witnesses other than Allah, if you should be truthful. 2:23

And if Muhammad had made up about Us some [false] sayings, 69:44

We would have seized him by the right hand; 69:45

Then We would have cut from him the aorta. 69:46

And there is no one of you who could prevent [Us] from him. 69:47

And indeed, the Qur'an is a reminder for the righteous. 69:48

4. When the Children of Israel do not obey the commandments of Allah, just as Allah has turned them into monkeys. This is the punishment of Allah. In Surah Mayda, Allah has declared the punishment for disobeying Allah's command. So if they do not obey the command of Allah, then Allah turns them into pigs. For example, in Surah Mayda, only monkeys are mentioned. The Children of Israel disobeyed the command of Allah, and the punishment of the Children of Israel for disobeying the command of Allah is remarkable. The Children of Israel did not obey the command of Allah, the heavenly book, the Court-Kachari (Courts). Then Allah made them monkeys. In Surah Mayda there is talk of making monkeys and pigs. And in Surah A'raf, Dogs. Therefore, these punishments are mentioned in the Holy Qur'an for disobeying the commandments of Allah.

Indeed, can we go to avoid the Quranic law whereas Allah revealed in the Holy Quran in Surah Al-Hashr verse 59, "If We had sent down this Qur'an upon a mountain, you would have seen it humbled and coming apart from fear of Allah. And these examples We present to the people that perhaps they will give thought." In verse 22 of the same surah Allah says, "

59|22| He is Allah, other than whom there is no deity, Knower of the unseen and the witnessed. He is the Entirely Merciful, the Especially Merciful."

In connection with this verse (59:22) Allah says, "And it is He who created the heavens and earth in truth (When interpreted as the "Day" (of resurrection). the sentence would read: "And the Day He says, 'Be, and it is, His word will be the truth). And the day He says, "Be," and it is, His word is the truth. And His is the dominion [on] the Day the Horn is blown. [He is] Knower of the unseen (That which is absent, invisible, or beyond the perception of the senses or of the mind and therefore is unknown to man, except for what Allah chooses to reveal) and the witnessed (What is the present, visible and known to man. The knowledge of Allah includes the reality of all things and all occurrences, no matter how they might appear to human beings); and He is the Wise, the Acquainted." 6:73

Why are we affected by Corona Virus?

Then Allah Ta'ala made a storm with water from the sky, gave locusts, gave lice, Frogs. These are examples of His punishment; When judgment is not given on the earth according to The divine book of Allah, then Allah gives these punishments. Then they will not even get a little water. It is mentioned here that the people of Hell will say, "You have become Paradise because of the Book of Heaven. "Now give us some water. Give us a little white water. And if you don't give water, give any other food. Then those people of Paradise will say: The people of Hell will serve you any food. Allah Ta'ala has forbidden us to give you food."

And you had already known about those who transgressed among you concerning the sabbath, and We said to them, "Be apes, despised."2:65

Say, "Shall I inform you of [what is] worse than that as penalty from Allah? [It is that of] those whom Allah has cursed and with whom He became angry and made of them apes and pigs and slaves of Taghut. Those are worse in position and further astray from the sound way." 5:60

So We sent upon them the flood and locusts and lice and frogs and blood as distinct signs, but they were arrogant and were a criminal people. 7:133

And when the punishment descended upon them, they said, "O Moses, invoke for us your Lord by what He has promised you. If you [can] remove the punishment from us, we will surely believe you, and we will send with you the Children of Israel." 7:134

And if We had willed, we could have elevated him thereby, but he adhered [instead] to the earth and followed his own desire. So his example is like that of the dog: if you chase him, he pants, or if you leave him, he [still] pants. That is the example of the people who denied Our signs. So relate the stories that perhaps they will give thought. 7:176

How evil an example [is that of] the people who denied Our signs and used to wrong themselves. 7:177

Whoever Allah guides - he is the [rightly] guided; and whoever He sends astray - it is those who are the losers. 7:178

And We have certainly created for Hell many of the jinn and mankind. They have hearts with which they do not understand, they have eyes with which they do not see, and they have ears with which they do not hear. Those are like livestock; rather, they are more astray. It is they who are the heedless. 7:179

5. My statement to the administration here is that when an officer is posted, he is shown cause if he does not join the work there. And Allah has given those provisions and the Prophet

and Messenger Muhammad SAW; shall we not obey Him and His revealed Quran. If not, will that be punishable for us? And it must be mention that there is a provision of Allah's punishment on the oppressors on behalf of the weak.

And they will come out [for judgement] before Allah all together, and the weak will say to those who were arrogant, "Indeed, we were your followers, so can you avail us anything against the punishment of Allah?" They will say, "If Allah had guided us, we would have guided you. It is all the same for us whether we show intolerance or are patient: there is for us no place of escape." 14:21

And Satan will say when the matter has been concluded, "Indeed, Allah had promised you the promise of truth. And I promised you, but I betrayed you. But I had no authority over you except that I invited you, and you responded to me. So do not blame me; but blame yourselves. I cannot be called to your aid, nor can you be called to my aid. Indeed, I deny your association of me [with Allah] before. Indeed, for the wrongdoers is a painful punishment." 14:22

And those who believed and did righteous deeds will be admitted to gardens beneath which rivers flow, abiding eternally therein by permission of their Lord; and their greeting therein will be, "Peace!" 14:23

6. Instruction to Dawood (AS)

These instruction is revealed in the Quran by the Almighty Allah for the mankind; so what we ought to do - following verses we must follow.

[We said], "O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your own] desire, as it will lead you astray from the way of Allah." Indeed, those who go astray from the way of

Allah will have a severe punishment for having forgotten the Day of Account. 38:26

Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing. 4:58

Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded. 16:90

Indeed, We sent down the Torah, in which was guidance and light. The prophets who submitted [to Allah] judged by it for the Jews, as did the rabbis and scholars by that with which they were entrusted of the Scripture of Allah, and they were witnesses thereto. So do not fear the people but fear Me, and do not exchange My verses for a small price. And whoever does not judge by what Allah has revealed - then it is those who are the disbelievers. 5:44

And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers. 5:45

And let the People of the Gospel judge by what Allah has revealed therein. And whoever does not judge by what Allah has revealed - then it is those who are the defiantly disobedient. 5:47

7. Prophet Muhammad SAW said that one hundred and twenty four thousand prophets have come to the earth. 315 of them are

messengers. And rest of them are prophets. Page 511m Mishkat Sharif. And there will be nineteen guards in hell.

Over it are nineteen [angels]. 74:30

What a wonder that the first verse of Surah Al-A'laq was revealed in Hera.

Recite in the name of your Lord who created - 96:1 Created man from a clinging substance. 96:2 Recite, and your Lord is the most Generous - 96:3 Who taught by the pen - 96:4 Taught man that which he knew not. 96:5

Also the Prophet on top of this, the last verse of the Holy Quran is, ...This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion.... 5:3

This verse was revealed in Medina. No other verse was revealed after that. And Muhammad (Sm) after that he was on earth for 82 days.

I would like to dedicate that although the Qur'an revealed to mankind is a very important and visible path, in verse 85 of Surah Bani Isra'il, Allah says that He has given man a little of His knowledge. It must be said that the novice and new discoveries of the human race in the world for the betterment of knowledge and science are the slightest gift of knowledge from Allah. Allah the Almighty says, And they ask you, [O Muhammad], about the soul. Say, "The soul is of the affair of my Lord. And mankind have not been given of knowledge except a little." 17:85

At this stage, we have to be careful about the Qur'an and the Sunnah in its implementation and observance; Because we Muslims have performed the prayers, performed the Aju hajj, but there is a provision of punishment for those who do not obey other rules. And the Beloved messenger of Allah

Muhammad (sm) was astonished at this. Example: Indeed, those who disbelieve in Allah and His messengers and wish to discriminate between Allah and His messengers and say, "We believe in some and disbelieve in others," and wish to adopt a way in between -Those are the disbelievers, truly. And We have prepared for the disbelievers a humiliating punishment. Sura 4: Nisa 150, 151. And when it is said to him, "Fear Allah," pride in the sin takes hold of him. Sufficient for him is Hellfire, and how wretched is the resting place. Sura 2: Al-Baqarah 206 Allah says, "Indeed, I know that which you do not know." 2:30

Not only that; Prophet Muhammad (sm) has the most influential persons on entire human being. The first sentence of the first person in his "The Hundreds Michael Heart of American Writer wrote in 1995 Mohammad to lead the list of the world's most influential persons may surprise some readers and may be questioned by others but he was the only man in history who was supremely successful on both the religious and secular levels, He was a philosopher, he was a political scientist and the best ever we remember others.

PREFACE BY THE AUTHOR

In the name of Allah, the most gracious, the most merciful.

All praise be to Allah, most high full of grace and mercy. And I ask blessings and salutations of peace for the nob/e Prophet (Sallallahu-alaihe-wasallam) and his companions and those who follow him in upholding the cause of right religion.

The Holy Quran is not a traditional or conventional religious book for a clean or a particular group only. It is the last edition of universal religion, which is the guide to mankind and also clear proofs for guidance and judgement (Between right and wrong). It is an endless guidance to eternal journey. There is no such problems of mankind the solutions of which are not described in the Holy Quran. So, the Quran is called the complete code and conduct of life for the mankind.

The Quran commands mankind to establish justice, equality and peace in every sphere of life. It is essential to create atmosphere of peace and tranquillity in individual life, family life and social surroundings. So, the Quran teaches mankind to establish peace by peace. Let Allah accept this as great endeavour for His Cause. (Ameen)

Not only that, there are different numbers written in some hadith books. But it would not be appropriate at all to have any doubts about them. I am thankful to Allah that He has given me the grace to memorize and translate about 22,000 hadiths. For this, many people call me '22 Hazari'. I will say politely that this is not my qualification. As I have said before, I am a very small person and I have no qualification. I have only had the grace to learn very little about the Qur'an of Almighty Allah and the hadiths of Allah's Beloved Muhammad (Sm). It is true that the field of translating a verse of Allah's Qur'an can

be explained by Islamic scholars on books. Otherwise, you will see that similar verses have been repeated in different suras of the Quran. The explanation of why, under what circumstances and when it was revealed is also of great significance and of course the subject of research.

It is clear from the following verses in the Holy Qur'an how justice will be administered and how the plaintiff will answer his question in the court. Introduced on it.

[It will be said], "Read your record. Sufficient is yourself against you this Day as accountant." 17:14,

But when it is said to them, "Beware of what is before you and what is behind you; perhaps you will receive mercy... 36: 65

Wherever you may be, death will overtake you, even if you should be within towers of lofty construction. But if good comes to them, they say, "This is from Allah "; and if evil befalls them, they say, "This is from you." Say, "All [things] are from Allah." So what is [the matter] with those people that they can hardly understand any statement? 4:78,

O Messenger, announce that which has been revealed to you from your Lord, and if you do not, then you have not conveyed His message. And Allah will protect you from the people. Indeed, Allah does not guide the disbelieving people. 5:67.

On the Day of Resurrection, Allah will give the shadow of the Throne to seven types of people, one of whom is the Judge. The other six are (2) those who are engaged in the worship of Allah while maintaining their purity in their youth, (3) those whose hearts are hanging with the mosque, (4) those who are friends with Allah for the sake of Allah, and those who are always absent from meeting, (5)) The one who preserves his holiness in the fear of Allah in spite of the call to make a

beautiful woman a bastard in solitude, (6) the one who gives secretly, (7) the one who sits alone in solitude and weeps remembering Allah. Bukhari 660, Muslim 2270, Tirmidhi 2391., Nasai 5380.

AUTHOR'S NOTE

The Qur'an (Sahih International Translation) with Sura introductions and appendix edited by A.B. Al Mehri (published by The Quran Project, Birmingham)

The Qur'an is the word of the Ever-living Allah; it has been sent down to guide humanity for all times to come. No book can be like it. As you come to the Qur'an, Allah speaks to you. To read the Qur'an is to hear Him, converse with Him and to walk in His ways. It is the encounter of life with the Life-giver. 'Allah – there is no deity except Him, the Ever-living, the Sustainer of existence. He has sent down upon you, [O Muhammad], the Book with in Truth ... as guidance for the people ...' (Qur'an 3:2-4).

For those who heard it for the first time from the lips of the Prophet, the Qur'an was a living reality. They had absolutely no doubt that, through him, Allah was speaking to them. Their hearts and minds were therefore seized by it. Their eyes overflowed with tears and their bodies shivered. They found each word of it deeply relevant to their concerns and experiences, and integrated it fully into their lives. They were completely transformed by it both as individuals and as a nation – into a totally new, alive and life-giving entity. Those who grazed sheep, herded camels and traded petty merchandise became the leaders of mankind.

As we come to the Qur'an, we come to a new world. Each verse (ayat) is a sign of Allah – informing us of His infinite mercy, power and knowledge. No other venture in our lives can be so momentous and crucial, so blissful and rewarding, as our journey to and through the Qur'an. It is a journey that will take us through the endless joys and riches of the words that our

Creator and Lord has sent to us and all mankind. Here we will find a world of untold treasures of knowledge and wisdom to guide us on the pathways of life, to mould our thoughts and actions. In it we will find deep insights to enrich us and steer us along the right course. From it you will receive a radiant light to illumine the deeper reaches of your soul. Here we will encounter profound emotions, warmth to melt our hearts and bring tears running down our cheeks.

It is beyond man's power to fully comprehend, or to describe, the greatness and importance of what the Qur'an holds for him. It is Allah's greatest blessing for him. It is the fulfilment of His promise to Adam and his descendants: '...when guidance comes to you from Me, whoever follows My guidance – there will be no fear upon them, nor will they grieve' (2:38). It is the only weapon to help our frail existence as we struggle against the forces of evil and temptation in this world. It is the only means to overpower our fears and anxieties. It is the only light (nur), as we wander in the darkness, with which to find our way to success and salvation. It is the only healing (shifa') for our inner sicknesses, as well as the social ills that may surround us. It is the constant reminder (dhikr) of our true nature and destiny, of our station, our duties, our rewards and our perils.

Allah – the Greatest

The Qur'an was brought down by the one who is powerful and trustworthy in the heavens – the angel Gabriel. Its first abode was the pure and sublime heart, the like of which no man has ever had – the heart of the Prophet Muhammad, blessings and peace be on him. More than anything, it is the only way to come nearer and closer to our Creator. It tells us of Him, of His attributes, of how He rules over the cosmos and history,

of how He relates Himself to us, and how we should relate to Him and to ourselves.

Most important is to remember that what we read in the Qur'an is the word of Allah which He has conveyed to us in a human language, only because of His mercy and care and providence for us. 'The Most-merciful, [He has] taught the Qur'an (55:1-2), and in another verse 'As a mercy from your Lord...' (44:6). The majesty of the Qur'an, is so overpowering that no human being can truly comprehend it. So much so, that Allah says, 'If We had sent down this Qur'an upon a mountain, you would have seen it humbled and coming apart from fear of Allah...' (59:21). This act of Divine mercy and majesty is enough to awe and overwhelm us, to inspire us to ever-greater heights of gratitude, yearning and endeavour to enter the world of the Qur'an. Indeed, no treasure is more valuable and precious for us than the Qur'an, as Allah says of His generosity, 'O mankind, there has come to you instruction from your Lord and healing for what is in the breasts and guidance and mercy for the believers.' (10:57).

The outcome of our entire life depends on how we heed the call given by Allah. The journey is therefore decisive for our existence, for mankind, for the future of human civilisation. A hundred new worlds lie in its verses. Whole centuries are involved in its moments. Know, in that case that it is the Qur'an, and only the Qur'an, which can lead us towards success and glory in this world and in the world to come.

AUTHOR'S PREFACE

In early 2008, a friend visited me at my home in Birmingham, UK. He was visibly emotional and asked if I could give him a translation of the Qur'an in English. He explained that he had a non-Muslim work colleague who had been enthralled by the Qur'an and that he, as a Muslim, felt ashamed he had not read it. So I gave him a spare translation I had and began to tell him some basic facts he should know as a seeker of truth -

The Qur'an is a unique book for a multitude of reasons. To name a few:

- It does not read in chronological order of revelation -
 - i.e. the first verse you read from Surah 1 was not the first verse revealed
 - nor the last verse from Surah 114 the very last verse revealed of the Qur'an.
- The Qur'an was revealed over a period of 23 years to the Prophet Muhammad -
 - Sometimes a few ayats at a time - (the first revelation began with five ayat, then seven, etc) and at other times, Surahs (chapters) were revealed as a whole.
- (An Ayat is normally translated as 'a verse' - a more accurate linguistic translation would be 'Sign' [of Allah])
- The Archangel Gabriel, under instruction from Allah, informed the Prophet to arrange the various ayats into Surahs.
- These Surahs (chapters) can be divided into two types -
 - those revealed before the migration of the Muslim community - The Mak-kan Period
 - and those revealed after the migration - The Madman period.
 - These Surahs would often include Ayats from both time periods
- The significance of the two periods -

- in Makkah the call to one Allah was new. The Believers were opposed, beaten and oppressed by the Makkans who were the main proponents of idol-worship in Arabia. The revelations in Makkah were regarding Monotheism, Paradise and Hellfire, the Day of Judgment etc. This was a period of many trials and tribulations for the Prophet Muhammad and the Believers.
- in Madinah the Prophet was the leader of the Islamic state. The revelations here centred on establishing the religion, engaging the enemies of Allah, social and legal rulings on marriage, divorce, inheritance, punishment etc.
- The challenges of both periods were different and the various Ayats reflect this.

Imam Siyuti has mentioned about 50 volumes of hadith books. In which Siah Sittah are mainly Sahih al-Bukhari, Sahih, Muslim, Sunan Abu Dawud, Sunan al-Tirmidhi, Sunan al-Nasa'i, Sunan Ibn Majah.

He rejected hundreds of authentic hadiths and disobeyed the Qur'an by pretending that it was not in the hadiths. But after the Qur'an, all the saheeh hadeeths will be replaced. There are 22 hadiths of Solasiyat in Bukhari Sharif. Of these, 20 hadiths have been collected from the students of Imam Abu Hanifa (Rah :). 11 from Makki bin Ibrahim, 6 from Abu Husain, 3 from Muhammad bin Abdullah; The same 20 hadiths.

From the student of Imam Abu Hanifa, one of the other two is narrated from Khallad bin Yahya and the other from Isam bin Khalid. They are all from Kufa. Apart from Bukhari, there are 50 other books of hadith in the world and there are six hadiths in it, not only in Bukhari. The hadith of objection is not accepted in the madhhab. Those who limit only 6 out of 50 books to Sahih are not acceptable. The total number of hadiths in the world is 1266665. And the number of hadiths in Sihah

Sitta is only 28699. Now think, how much do we value? There was a call to the world to act on all the remaining hadiths. I do not know the reason for the fetna.

1. Sahih al-Bukhari
2. Sahih Muslim
3. Sunan Abu Dawood
4. Sunan al-Tirmidhi
5. Sunan al-Nasa'i
6. Sunan ibn Majah
7. Muwatta Imam Malik
8. Kitaab-ul-Aathaar
9. Sunan ad-Darimi
10. Musnad Ahmad ibn Hanbal
11. Saheeh Ibn Khuzaymah
12. Sahih Ibn Hibban
13. Al-Mustadrak alaa al-Sahihain of Imam Hakim (Talkhis al-Mustadrak)
14. Al-Mu'jam al-Kabir of Al-Tabarani
15. Al-Mu'jam al-Awsat of Al-Tabarani
16. Al-Mu'jam as-Saghir of Al-Tabarani
17. Musnad al Tayalisi
18. Musnad Abu Awaanah
19. Musannaf Ibn Abi Shaybah
20. Musannaf of Abd al-Razzaq
21. Al-Adab al-Mufrad
22. Sunan al-Kubra lil Bayhaqi (Al-Sunan al-Kabir)
23. Shuab ul Iman
24. Shama'il Muhammadiyah (Shamaail Tirmidhi)
25. Musannaf ibn Jurayj
26. Sunan al-Kubra lil Nasa'i
27. Sahifah Hammam ibn Munabbih
28. Tahdhib al-Athar
29. Musnad Imam ul A'zam

30. Musnad al-Shafi'i
31. Musnad al-Siraj
32. Musnad al-Firdous
33. Musnad Abu Ya'la
34. Sunan Sa'id ibn Mansur
35. Khasais of Amir Al Momenin
36. Sunan Dar Al-Qutni
37. Musnad Humaidi Imam Al-Humaydi
38. Musnad Ishaq Ibn Rahwayh
39. Musnad al-Bazzar
40. At-Targhib wat-Tarhib
41. Mishkat al-Masabih
42. Masabih al-Sunnah
43. Riyadh al-Saaliheen (The Meadows of the Righteous)
44. Bulugh al-Maram (Achievement of the Goal)
45. Majma al-Zawa'id
46. Kanz al-Ummal
47. Zujajat al-Masabih
48. Muntakhab Ahadith
49. Al-Mawdū'āt Al-Kubrā (A Great Collection of Fabricated Traditions)
50. Silsilah Ahadith as-Sahihah of Muhammad Nasiruddin al-Albani
51. Jami' as-Sahih of Muqbil bin Hadi al-Wadi'i

Author's statement about Sahih Hadith

Many may think that the Prophet Muhammad (peace be upon him) died in 632 AD. This was followed by the birth of Imam Bukhari (ra) in 194 AH (810 AD). So how does he collect this hadith as saheeh. I would like to tell the people of the world that Imam Bukhari (Rah.) Was born in 194 AH. . A table of how

he contributed to the collection of hadith from the Prophet Muhammad (peace be upon him).

1. Hazrat Muhammad S.
2. Ustad Abdul Ibn Masood
3. Imam al-Qamah
4. Ibrahim Nakhi
5. Imam Hammad Rah.
6. Imam Abu Hanifa said.
7. Imam Abu Yusuf Rahmatullah
8. Imam Ahmad Ibn Humble said.
9. Imam Sufyan Sauri Rah.
10. Imam Bukhari said.

Not only that, there are different numbers written in some hadith books. But it would not be appropriate at all to have any doubts about them. I am thankful to Allah that He has given me the grace to memorize and translate about 22,000 hadiths. For this, many people call me '22 Hazari'. I will say politely that this is not my qualification. As I have said before, I am a very small person and I have no qualification. I have only had the grace to learn very little about the Qur'an of Almighty Allah and the hadiths of Allah's Beloved Muhammad (Sm). It is true that the field of translating a verse of Allah's Qur'an can be explained by Islamic scholars on books. Otherwise, you will see that similar verses have been repeated in different suras of the Quran. The explanation of why, under what circumstances and when it was revealed is also of great significance and of course the subject of research.

Gazi Shamsur Rahman, he is the pioneer of one unique law of the sub-continent. For almost 30 years of his life, he excelled in

law, beginning with an assistant judge and ending with a district judge or session judge. Ekushey Padak recipient Gazi Shamsur Rahman: The way the judges and readers have integrated the law with the commentary, precision, commentary, illustration, practice on the 511 holdings of Mr. McCully's Penal Code and the assurance that the wisdom of his Surdi life is the result of a groundbreaking thoughtfulness. When this great man came to the end of his life, he became the President of the Islamic Law Legislation Board, which was established by the Islamic Foundation Bangladesh, and was able to realize the truth. As a result, he introduced 1441 sections of Islamic law, comprising 1441 sections in three volumes, by the Islamic Foundation. These verses are in the light of the Holy Quran and Sunnah. The other honorable members of this Islamic Law Legislation Board are Mr. Gazi Shamsur Rahman, Mr. A. H. M. Shamsul Alam, Mr. Shah Abdul Hannan, Allama Ubaydul Haque Jalalabadi (Khatib, Baitul Mukarram Masjid), Mr. Maulana Muhammad Musa, Dr. Muhammad Harunur Rashid. Justice in the Eye of Islam, the author of this reform. Syed Allama Nazrul Islam expressed his gratitude and said that this landmark step is undoubtedly a document of Islamic law. It is true that they have properly fulfilled the responsibilities of this board towards Islamic law. In fact, the Islamic Foundation has done a unique general work of the Islamic Foundation by Bangabandhu Sheikh Mujibur Rahman, the founder of the independence of Bangladesh.

INTRODUCTION BY THE AUTHOR

Man is a social as well as rational animal. He has to abide by some established rules customs, norms and laws and religious norms. These are called social control. Among these social controls, laws and religion are the most important one's. Laws were formulated by men to control and regulate the behaviour and activities of people. Religion has also had its influence in moulding law and has given us most of our conceptions of right and wrong. The religion came to earth to stop mutual fighting, to unite mankind and to teach tolerance and endurance, to guide men in the path of truth and goodness.

In the eye of justice hadith says, "The Prophet (S.M) said, "Allah will give shade, to seven, on the Day when there will be no shade but His. (These seven persons are) a just ruler, a youth who has been brought up in the worship of Allah (i.e. worships Allah sincerely from childhood), a man whose heart is attached to the mosques (i.e. to pray the compulsory prayers in the mosque in congregation), two persons who love each other only for Allah's sake and they meet and part in Allah's cause only, a man who refuses the call of a charming woman of noble birth for illicit intercourse with her and says: I am afraid of Allah, a man who gives charitable gifts so secretly that his left hand does not know what his right hand has given (i.e. nobody knows how much he has given in charity), and a person who remembers Allah in seclusion and his eyes are then flooded with tears." [Sahih Bukhari / 660](#).

I had this vision when I was in the Medina Sharif. I started this book while sitting in the Medina Monowar. Sitting in the Rawza Sharif of the Prophet (Sm), I cried and sat in the Gare Hera, thinking that my Allah has created this world and the

universe where the law will prevail. There we hear His words only through recitation and read the Qur'an of Allah. But the implementation is completely different. I have given my hand to Allah to save me in the Hereafter, because I have no merit, I am inferior, only merit is on the mind, on the trust of Allah.

Commentry on study of Islamic Law

The cases in which Islamic law has to be enacted are extremely difficult. Because, in these cases, there has been no study of Islamic law. Therefore, in most cases, researchers have to rely on the "principles" of Islamic law and past examples.

In fact, legislation on these issues requires long-term study and research of advanced talent. Because, after the fall of the Mughal Empire and with the discovery of mechanical power, the radical changes in the social system, there has been no research on Islamic law, but at this stage of time, its research has come to a complete standstill. Hopefully, research has started at this stage in various Muslim countries, even in non-Muslim countries. New social institutions are being formed on the basis of Islamic law and the existing institutions are being reformed.

In fact, religion is the original and main source of law, it is not the human brain but religion that makes people accustomed to obey the law. When Allah sent the first man, Adam (peace be upon him), to the earth with the necessary knowledge, he said, No. " (Surat al-Baqara: 36).

Characteristics of Islamic law: In fact, Islamic law is timeless, timeless and the greatest of all time. There are many beneficial and fruitful features of this law. Below are some of its features.

1. The first and foremost feature of Islamic law is the divine foundation: the source of this law is the Qur'an of Allah and the Sunnah of the Prophet (peace be upon him). If any law is mentioned briefly in the Qur'an, the Prophet (peace be upon him) has explained it in detail through his words and deeds. Allah and His Messenger know best what kind of system or provision is most beneficial for human beings.

2. Universality: Where the application of man-made Western law is confined to a specific territory of a state, Islamic law applies equally to Muslims living in different countries of the world, but also to the entire human race. The application of Islamic law is universal.

3. Uniformity:

4. Irrevocability:

5. Variability:

6. Unity and Integrity:

7. Mandatory and optional:

8. Compromise arrangements

9. Freedom of belief:

10. Mobility:

11. Consistent with Islamic law:

In addition, the unity, solidarity, progress and liberation of the Muslim Ummah depends on the implementation of this law. Therefore, Muslims must take the lead in taking steps to enforce Islamic law in their own interest by rejecting all other laws. It contains the welfare of all human beings.

Gazi Shamsur Rahman

May, 1998

PREFACE ON EDITING COMMENTERY OF PENAL CODE (1860 AD)

by Gazi Shamsur Rahman

As stated in A.I.R. 1914 Calcutta 69 (105), the scheme of the Penal Code is that there is first the definition of an offence and then a Penal Provision relating to it. In other words, the Penal Code Provides :

- (1) Law of Crimes and
- (2) Law of Punishment.

What then is crime ? Paul W. Tappan defined crime as «an intentional act or omission in violation of criminal law, committed without defence or justification, and sanctioned by the law as felony or misdemeanour. It appears, however, that the definition could conveniently be reduced to «an act or omission in violation of criminal law,» since any defence or justification is to be found within the criminal law, and there is no question of violating the criminal law if some defence or justification is available for a particular act or omission in certain circumstances. Further, it is not necessary for an act or omission to be intentional in order to be a crime ; it could be made punishable on the basis of knowledge, recklessness or negligence even without any reference to the mental element of the wrongdoer, i.e., based on the concept of strict responsibility.

The word used by the Code is “offence”.

What is then an “offence” as here described ? It is said to denote “a thing made punishable by this Code”. Now the words «a thing» is as vague as it is comprehensive, for it may mean either a subject or an object, the doer or the deed. But it is obviously used in the latter sense as connoting acts and omissions made

penal by the Code- But no legal responsibility attaches to them apart from the doer. It is he who is punishable in respect of them. The term must mean, then, acts and omissions for which a person is punishable under the Code. But the language of the section is it for it speaks of "a thing made punishable by the Code", which of course, could only mean the doer punishable by the Code. But though this sense is clear, it is not inevitable and has been the Subject of judicial comment.

What remains for consideration in this discussion is punishment.

Punishment is the node by which the State enforces Its laws forbidding the doing of something, or omission to do something. Punishment may take different forms It may be a mere reprimand ; it may be a fine ; it may be whipping ; It may be imprisonment simple or rigorous ; it may even extend to death. But whatever the form, punishment is always co-related to a law of the State forbidding the doing or the omission to do something. Unless such a law exist, there is no question of any act or omission being made "punishable Punishment is the suffering in person or property inflicted on the offender under the sanction of law. It is the retribution due for violation of the rules of society which are made for its preservation and peace and the infraction of which is a crime. The Code measures the gravity of the violation by the seriousness of the crime and its general effect upon public tranquillity. The measure of guilt is, therefore, the measure of punishment. And it is, therefore, essential that the punishment must fit the crime. It was, at one time, a moot question whether retribution or reform was the sole motive of punishment. Bentham regarded the prevention of mischief as the sole aim of punishment. Other writers regard retribution as its chief mission, but it is evident that so

long as punishment was the concern of the person aggrieved, retribution was the sole object. But when it became a function of the State and as society progressed, retribution receded into the background, and prevention of crime and reform of the criminal became as much its concern as the primitive wreaking of revenge- The true doctrine of punishment in modern civilized State is, therefore, now based on the prevention of crime, but it is only its main, though not its sole, object. For notwithstanding what has been said by Plato, both personal as well as public sentiments demand that the person who has made others suffer unjustly should himself be made to Suffer in return.

This is quite distinct from the moral side of an act with which properly the Courts are not concerned. They are concerned solely with the nature of the act viewed as a crime, or breach of t lie law . The law indicates the gravity of the act by (he maximum penalty provided for its punishment and the Courts have to judge whether the act committed falls short of the maximum degree of gravity, and, if so, by how much.

The principal object of punishment, however, is the prevention of crime and the measure of punishment must, consequently, vary from time to time according to the prevalence of a particular from of crime and other circumstances. An amount of severity may be very appropriate at one time which would be quite uncalled for at another. It may generally be taken as a sane principle to follow, that punishment should be made as moderate as is consistent with the object aimed at.

Now a bit of history of the Code.

The Law Commissioners, charged with drafting the Code wrote :

“Under these circumstances we have not thought it desirable to take as the groundwork of the Code any of the systems of law now in force in any part of India. We have, indeed, to the best of our ability compared the Code with all those systems, and we have taken suggestions from all ; but we have not adopted a single provision merely because it formed a part of any of those systems. We have

also compared our work with the most celebrated systems of Western jurisprudence, as far as the very scanty means of information which were accessible to us in this country enabled us to do so. We have derived much valuable assistance from the French Code, and from the decisions of the French Courts of Justice on questions touching the construction of that Code. We have derived assistance, still more valuable, from the Code of Louisiana prepared by the late Mr. Livingston.”

This was then the groundwork of the Code which the four Law Commissioners, of whom Lord Macaulay was the chief, prepared, and which they submitted to the Governor-General in Council on the 14th October, 1837. It was then circulated to the Judges and law advisers of the Crown, and on the 26th April, 1845, a communication was sent to a small commission of two gentleman with the following directions : “The Governor General in Council is desirous that some step should be taken towards a revision of the Code with a view to its adoption with such amendments as may be found necessary, or to its final disposal otherwise. For this purpose I have been instructed to refer to you for examination all the opinions received from the several presidencies as per enclosed list, and to direct your attention to the ‘Act of Crimes and

Punishments’, contained in the seventh report of the Commissioners of the criminal law of England, with a view to comparison, and the detection of any omissions or other

imperfections that may exist in the Code with these materials, the Governor-General in Council trusts that you will be enabled to frame such a report as may assist the Government of India in forming a judgment on the merits of the Code at no distant date.» The effect of this commission was the revision of the Code in the light of English law which was then intended to be codified, and for which a similar commission had been then sitting in England. This commission submitted the result of its examination in two reports, dated 5th November, 1846 and 24th June, 1847, and recommended its enactment for the whole of British India. The Bill as so revised appears to have remained pigeon-hole for twelve or more years, for it was only on the 6th October, 1860, that is, some twenty-five years after its first conception, that it was passed into law, and became practically in supersession of all pre-existing rules, regulations and orders the Code of criminal law in India.

The Code, as at present, is divided into twenty-three chapters; and these in their turn are subject to great divisions into which the offences described in the Code naturally fall, viz – (i) offences against the State and the public and (ii) offences against the person and property. In this respect, the Code adopts the classification of the civil law into public and private offences. This division of crime has received the sanction of Austin who justifies it by reference to the division of civic duty.

The Code is a monumental achievement, as evidenced by the fact of its retention without major amendments in three countries of this sub continent. There are, however, small deficiencies.

Sections of the Code do not appear to have been properly arranged. Some sections of the Code overlap one another. Some forms of crimes are no longer in existence.

Punishment of fine is not always commensurate with the offence: at any rate the amounts prescribed as punishment no longer reflect real cost or suffering of the convict on account money-value having seriously gone down.

Introduction by Gazi Shamsur Rahman

in the Statutory Islamic Law Part 1

A. PENAL CODE

[ACT No. XLV OF 1860]

[6th October, 1860]

CHAPTER I

INTRODUCTION

Preamble.—Whereas it is expedient to provide a general Penal Code for Bangladesh; It is enacted as follows :

COMMENTS

The Common. Law of England was never made applicable to this country by any Act of the Parliament or by any enactment of the Indian Legislature. It were only the Charters, granted to the East India Company, that enjoined, upon the Company and its servants, due obedience to the Common and Statute Law of England. It was only towards the close of the 18th Century that the Supreme Courts of Madras, Calcutta and Bombay were established, where the King's Judges administered the Common Law of England. Outside the jurisdiction of the Supreme Courts, the law of the land, with regard to civil matters, and the Mohammedan Law, with regard to offences, were administered by the Company's Courts- From 1802 onwards, the various Regulations (Regulation II of 1802 ; Regulation III of 1808 ; Regulation XVI of 1825 ; Bengal Regulation XVII of 1817 ; Regulation XII of 1818 ; Bengal Regulation XIV of 1827 ; Regulation XVIII of 1827 ; Regulation XXII of 1827 ; Madras Reg. VI of 1811 ; Regulation XIII of 1816 ; Regulation XIV of 1832) were passed with regard to the trial of offences and

trial, of civil suits. It was the law, declared in these Regulations, that governed the trial and punishment for offences before the commencement of this Code.

The Penal Code is codifying statute which may be defined as a statute. Intended to be complete in itself with regard to the subject-matter with which it deals. Under S. 1, as it originally stood, the Penal Code was to take effect "on and from the 1st day of May, 1861". This date was, however, changed to the "First day of January, 1862", by Act 6 of 1861, and it was on this latter date that this Code came into effect. The reason for changing the date of the commencement of this Code was that it was thought that it would not be right to allow the Code, which altered the whole criminal law of the country, to take effect before it was translated and published for the information of the people and before the Indian Courts had ample time to study it thoroughly. The said date was subsequently omitted by the Repealing and Amending Act, XII of 1891, as it was no longer necessary.

B. Alhamdulillah. All praise be to Allah Sharika Lahu. Prayers and peace be upon his beloved Prophet Muhammad (peace be upon him). May the pleasure of Allah descend upon His Companions and those who have contributed to the continuity of Islamic law throughout the ages.

In the time of the Prophet (peace be upon him) and the four caliphs (11-40 AH) a strong foundation of Islamic law was laid. During the Umayyad (41-132 AH) and Abbasid (132-656 AH) period, Islamic law underwent extensive expansion through personal and institutional research. From the time of the Prophet (peace be upon him) onwards, for the next one and a half hundred years, the system of justice was conducted directly in the light of the Qur'an and the Sunnah. If there is no direct guidance in these two sources, then the decisions of

Khulafa Rashedin should be followed. Thus the expansion of Islamic law is supported by the Qur'an and Sunnah. In this case also, if no instruction was readily available, the judge would decide the case through his own ijihad. But there is no compilation in the form of statutory, the differences are increasing day by day.

In view of the above situation, Ibn al-Muqaffa (d. 144 AH / 761 AD) first proposed to the Abbasid Caliph Abu Jafar Mansur (d. 158 AH / 774 AD) to formulate a set of laws for the whole country. He sought to make her realize the importance and necessity of compiling a complete compilation of his letters. Although the caliph realized its importance and necessity, it was not possible to take action in this regard for various reasons.

In the second century AH, Imam Abu Hanifa (ra) and his companions laid the foundation for the usual study of Islamic law. They have become unforgettable in the study of law. Not only did they come up with a legal solution to the problem that arose at the time, but they also researched and determined the legal solution to what kind of problem might arise in the future and what the solution might be. This is one of the reasons why they are called Ahlul Roy (intellectual). Unfortunately for us, where our predecessors have determined the solution of many legal problems that may arise in the future by ijihad, we are unable to offer a solution to the future, let alone the solution to the problem ahead.

Through the tireless work of Imam Abu Hanifa (ra) and his companions, a comprehensive framework of Islamic law was formulated and later expanded by the Hanafi jurists. No complete and integrated compilation has been compiled till then. In the 11th / 17th century, the first Mughal emperor, Aurangzeb Alamgir, issued a royal decree four years after his

accession to the throne, ordering the compilation of a complete set of Islamic laws. In order to carry out this task successfully, a committee was formed with the help of eminent Indian jurists of the time and under the chairmanship of eminent scholar Nizamuddin Borhanpuri. The committee, after eight years of tireless efforts, prepared a large compilation of Islamic teachings; It was named 'Fatawa Alamgiri'. This is the first government-sponsored compilation of Islamic law.

Following the Western format of the law, the Ottoman government of Turkey formed a committee in 1869 under the leadership of Saadat Pasha to sort out Islamic law according to sections, subsections and serial numbers. This committee prepared a set of Islamic Civil Laws containing 1851 sections. It is known as 'Majallatul Ahkamil Adaliya'. This compilation is mainly based on Fatawa Alamgiri. It remained in force in the Turkish Empire until 1926. We have also enlisted his help in our legalization. Since then, no other government has taken the initiative to modernize Islamic law. However, under the auspices of the Islamic Research Institute in Pakistan under the auspices of the Supreme Court of Pakistan. Tanzilur Rahman is constantly engaged in the modernization of Islamic law. So far we have received five volumes of his compilation entitled 'Majmooah Qawanine Islami' and it has come to an end with the part of Islamic law which is currently in force in Bangladesh. We have also taken the help of this book in our work. The work of legalizing Islamic law is moving forward with three great objectives in mind.

A. Since Islam is an all-encompassing way of life for all countries, there must be ways and means to solve all the new and old problems of human life and the rules and regulations of Islam. Otherwise, the claim of this completeness can only be considered an exaggeration. If Islamic law is enacted, it will be

seen that this claim of completeness is not unreasonable, it has touched all the problems of human life.

Two. It was expelled from the country in the mid-nineteenth century with a far-reaching stigma attached to Islamic law. If Islamic law is enacted, it will be clear that its form is not tainted; Rather, it shines in the light of all-time usefulness. A small example will illustrate the point. Innocent people are constantly dying in truck and bus accidents in Bangladesh. Those who are being killed are going above all debts. Western law does not provide adequate attention to the full and appropriate compensation of the miserable condition of their children. The provision of compensation in this situation proves the perpetual modernity of Islamic law.

Three. Nowhere in the entire Muslim world is the whole Islamic rule codified. In India, Pakistan, Sri Lanka, Myanmar, Indonesia, Malaysia, Tunisia, Egypt, etc., only a fragmentary Islamic law has been enacted. In Bangladesh, there are statutory laws on marriage, divorce, guardianship, etc. But their method of application is not in accordance with Islamic law. For example, in Bangladesh, divorce cases can be tried by a non-Muslim judge and there is no use of Islamic evidence law in that case. We hope that the completion of this project will be a valuable contribution to the entire Muslim world.

In the developed world there are two styles of legalization, one Anglo Saxon and the other Continental. In England, America, Canada, New Zealand, Australia, etc., the law is enacted in the first section in large areas of the world and in European countries like France, Italy, etc., in the second section. We are legislating Islamic law in the first section. It is better and more familiar in our opinion.

There are two other sections of the law in the world. One is Common Law and the other is Statutory Law. The countries mentioned above fall into the Common Law category, with several other countries, including this subcontinent, falling into the second category. Since the first section is not acceptable in the philosophy of Islamic law, in this case we have followed the second section.

When the river is flowing, there is no space for clade land in the chest of the river. But when the river loses its current and turns into a clogged reservoir, there is a danger of many foul-smelling insects emerging in it. When Islamic law was in motion in the flow of application, the solution to the problem arose through analysis as soon as it arose. As its application in the world has become limited, many problems have not been solved properly due to lack of flow. So we are carrying out this legalization process keeping in mind the problems of the modern age.

In the guise of a victor, it spreads all over the world, and in contrast, the one-time irresistible Muslim power continues to decline accordingly. The Christian nation dominates almost the entire Muslim world. Through new discoveries and researches, the West laid the foundation of a new social system devoid of religion. Small and large scale industries, bank insurance and similar financial and commercial numbers flourished. Government administration and the judiciary were formed in a new political perspective, and they became so widespread with branches that it was unimaginable. These institutions are governed by laws written by Western scholars. In many cases, this law is in conflict with Islam. With the decline of Muslim power, the study of literature, science and law of Muslims also came to a standstill. It became impossible for them to keep pace with the mechanical civilization. As a result, it was not

possible for the Muslim jurists to formulate a legal framework like the modern system of government. Similarly, no proper legal framework has been developed for conducting financial institutions, trade and commerce etc. In the age of Western expansion, the study of jurisprudence's law has been limited to worship, marriage, divorce, etc., and is still limited. But the hope is that banks, insurance and these national financial and commercial institutions will begin to operate within the framework of Islamic law.

Therefore, it is very difficult for a modern state and all its activities to legislate in order to conduct itself in a well-organized manner according to the Islamic ideology. Because the gap of nearly two and a half hundred years of fiqh research is not easy to fill in a short time. Apart from that, the scholars of Islamic law are not familiar with the complex and wide scope of the present state activities as they are conducted by people educated in Western education. On the other hand, the western educated people in the administration are deprived of the knowledge of Islamic Sharia. So the problem is more obvious.

But there is no reason to despair. The laws that have been enacted so far for the conduct of state affairs in Bangladesh, its various agencies, trade and commerce, etc., can be examined in the light of Islamic law. Therefore, this experiment can be done by forming one or more committees consisting of modern law scholars, experts in the field and jurists. I am proposing to the Islamic Foundation authorities to take such an initiative. However, a similar proposal is under consideration by the Islamic Foundation Bangladesh.

The application of human intellect in the formulation of Islamic law

Judgments were made on the basis of revelation in the time of the Prophet (peace be upon him). These revelations were of two kinds. The Qur'an is called 'Ohi Matlu' and the Hadith of the Prophet (peace be upon him) is called 'Ohi Ghair Matlu'. God the Almighty says:

"When Allah and His Messenger decide a matter, no believing man or believing woman has the authority to decide it differently." And whoever disobeys Allah and His Apostle, he indeed strays off into clear error. " (Surat al-Ahzab: 36)

Revelation Ghair Matlu, that is, the provision of rules by the Prophet (peace be upon him) is also approved by Allah and it is essential to follow it. The words of God Almighty:

"Accept what the Messenger gives you, and refrain from what he forbids you." (Surat al-Hashr: 6)

"And he does not speak fiction; This is the revelation that is revealed to him. " (Surah Najm: 3,4)

Therefore, if the Muslims take the initiative to enact laws contrary to the law derived from the Qur'an and Sunnah (Hadith), they will be led astray instead of following the right path. The role in this case will be to come up with ways to successfully implement the relevant provisions. Where the Qur'an and the Sunnah are silent, multiple meanings or vague or spatial and temporal, the issue of enacting laws in the application of human intellect is universally accepted. Islam does not prohibit the enactment of laws in the application of human intellect, but rather it is limited and controlled by the predominance of the principles given by Allah and His Messenger (peace be upon him). By acknowledging the supremacy of this supreme law, there is freedom to make laws in the exercise of human intellect.

There are a number of issues in the practical life of human beings about which the Qur'an and the Sunnah have provisions or the above two sources have laid down some principles. Again, there are many things about which the Qur'an and the Sunnah are completely silent. This silence bears witness to the fact that the great legislator, Allah la sharika lahu, has given man the right to make decisions in this case by applying his own judgment or intellect. But in this case, the legislation should be conducted in such a way that it is in harmony with the vitality of Islam and its principles, its temperament-nature is not contrary to the temperament nature of Islam and it can be properly established in the Islamic way of life. This law-making process keeps the legal system of Islam moving and helps it to evolve with the changing circumstances of the age. This can be done only through a special *ilmi tahkeek* and intellectual inquiry. In Islamic terminology, such activity is called *ijtihad*. The right and necessity of *ijtihad* is recognized by the activities of the Holy Prophet (SAW) and his Companions.

When the Prophet (peace and blessings of Allaah be upon him) sent Mu'aadh ibn Jabal (ra) to Yemen, he asked, "How will you judge?" He said, "According to the guidance given in the Book of Allah." He said, What if God is not found in the book? He said, it is according to the Sunnah of the Prophet (peace be upon him). Mahani (peace be upon him) said, if it is not found in the Sunnah of the Messenger of Allah? He said, "I will do my best to reach the truth with my intelligence and will not neglect it at all." The Prophet (peace and blessings of Allaah be upon him) said, "All praise is due to Allaah, Who has given the Messenger of Allaah (peace and blessings of Allaah be upon him) the grace to follow the way that is pleasing to the Messenger of Allaah." (Tirmidhi, *Abwabul Ahkam*, Chapter 3: *Ijtihadir Roy Phil-Kada*)

Abdullah ibn Mas'ud (may Allah be pleased with him) said, "But if there is a matter which has no provision in the Book of Allah, there is no similar decision of the Prophet (peace and blessings of Allah be upon him) and no similar decision can be obtained from the righteous." If so, he will try his best to reach the right conclusion (ijtihad). But don't say this, I'm scared, I'm scared. " (Nasai, Kitabu Adabil Kudat)

Hazrat Umar (ra) has said the same thing in a letter sent to Justice Shurayh (ra) (Nasai, Kitabu Adabil Qudat). The content of ijma, which is recognized as the third most important source of Islamic law, is also largely ijtihad-derived. It can also be a matter of consensus among the Companions or the Tabi'is or the later jurists. Or the ijma can be organized in such a way that a Companion, a Tabi'i or a jurist has expressed his wise opinion on a subject and his contemporaries have not opposed him and the people of later times or contemporaries have accepted that opinion.

Therefore, we can further say that the fourth important source of Islamic law, 'Qiyas', is basically an opinion derived from human intellect or Ijtihad-derived opinion and this opinion also takes the form of consensus in some cases or at some stage. The vast and invaluable compilations of Islamic law that we have acquired in the form of fiqh are essentially human-made contributions. However, we have mentioned above the boundaries to be followed in the application of human intellect.

Terms of application of human intellect

In order to make a law for the application of ijtihad, that is, for the application of human intellect, there must be some essential qualities in the practitioner of intellect. As much as it is necessary to open the door of ijtihad, it is also necessary to be careful.

One. The practitioner of intellect must have firm faith in the Shari'ah given by Allah, must have a sincere determination to abide by it, must be free from the desire to break its bond, and must be guided by the Islamic Shari'ah.

Two. It is essential for the intellect to have a thorough knowledge of the Arabic language, its grammar and literature. Because the Qur'an has been revealed in this language and the work done on the Sunnah and Islamic law of the Prophet (peace be upon him) is a vehicle to be informed about it.

Three. It is necessary for the practitioner of intellect to have such knowledge of the Qur'an and Sunnah through which the essence of the Shari'ah can be reached.

Four. The intellectual practitioner must also have a deep knowledge of the work that has been done on Islamic law in the era of Rasulullah (peace be upon him) and Khulafa Rashidar and the way in which the Mujtahids have developed Islamic law over the ages. Ijtihad training requires not only this knowledge, but also to be aware of the evolution and continuity of the law. Through this it will be known what methods were adopted to harmonize the instructions of the Qur'an and the Sunnah with the contemporary situation in different eras and what laws were enacted on a broad basis.

Five. The practitioner of intelligence must have a deep understanding of real life situations, situations and problems. Because the instructions and principles of Shariah will be applicable to these.

Six. The appellant of the intellect must possess advanced character traits in accordance with the standards of morality. The ijtihaad of a characterless person cannot be trustworthy, reliable and acceptable to the people. Therefore, there must be

a force to be reckoned with, such as a state of safety from the state, money, position, etc.

It is only through the ijtiḥād of a learned person possessing the mentioned characteristics that Islamic law can be developed according to the correct structure.

Principles for the preparation of books

1. The books have been written mainly following the Hanafi school. However, in the context of the age, the rational views of other sects have been followed in certain cases. Such changes are valid and recognized in the context of the age. For example, according to the earlier Imams of the Hanafi Madhhab, a judge can judge an event based on his own eyewitness without any evidence. But later Hanafi jurists, rejecting this view and accepting the views of the Maliki, Shafi'i and Hambali schools, have said that the judge is obliged to complete the trial on the basis of evidence, and he has no value in witnessing it. At present, the latter is as acceptable as the latter.

2. In favor of the subject, first the verses of the Qur'an, then the Hadith of the Prophet (peace be upon him) are mentioned. Where it is not possible to quote from either of the two sources, the Ismaprasut opinion of the Companions or their personal opinion or the support of Hanafi jurisprudence has been accepted in stages. Opinions of other schools of thought have also been mentioned in important cases. We want to emphasize that we have not made any provision based on our own opinion and we do not have that power and authority.

3. The book is divided into two main parts. In the first part, the basic law is presented in a statutory form. In the second part, a brief commentary is given under the heading of analysis under the statutory law to indicate the source of the law. This is where the Qur'an, Hadith and other quotations are indicated.

This is the first such coherent work on Islamic law in Bengali. If the work of legalizing Islamic law is completed in stages, the Pak people, especially those involved in the legal profession, will realize that Islamic law is fully capable of meeting the needs of the age, which is not at all unreasonable, there is a strong argument behind it.

Although Western scholars have extensively researched various aspects of Islam and published it in book form, they have deliberately abandoned the study of Islamic law. They have only criticized some of the Islamic laws in their eyes and have unreasonably criticized the whole legal framework of Islam on the basis of them. Our work will disprove this irrational and hateful criticism of them.

In fact, Islamic law is not at all outdated compared to modern law. There is a huge force of faith behind this law. We believe that the book will be able to dispel the doubts of those who have doubts about the successful management of a modern social system based on Islamic law and create self-confidence in them. On the other hand, for those who are trying to build a social structure based on Islamic Sharia, this book will serve as a tool. On the other hand, if the government ever takes the initiative to enact Islamic law, the library will be a milestone for them as well.

The following chapters have been inserted in this section in phases: Crime, II. Punishment, 3. Crimes against human life, 4. Crimes against the human body, 5. Adultery, 6. Chu, i 6. Taking drugs, 6. Buying-selling and trading, 9. Interest, 10. Ihtikara (majutdari), Bai Salam and Murabaha, 11. Partnerships and joint ventures, 12. Marriage, 13. Divorce, 14. Maintenance, 15. Hidanat (child care), 16. Inheritance, 16. Shufa (advance purchase), 16. Heba (donation) 19. Waqf and 20. Wills.

In fact, the main author of this book is Maulana Muhammad Musa. Not only sound education but his alertness and dedication too are most required. He had to prove in support of Nass that what he was drafting was correct. He continued to revise the work until the committee was satisfied.

Maulana Obaidul Haq, the member of the committee and the Khatib of Baitul Mukarram National Mosque, has been the one who has given hard work and direction in this amendment, refinement, expansion and addition work. It is to be noted that I have felt the depth of his knowledge in Islamic law in every one of his recommendations.

Maulana Mozammel Haque, a member of the committee, did not write much. Yet he has worked with dedication, enduring the push of my correction and refinement very easily and simply. May Allah increase their work ethic and energy.

A separate book may be written on each of the topics covered in this text. It is hoped that the research department of the Islamic Foundation will take the initiative to prepare a detailed commentary after the completion of the formalization work. This issue has been repeated in different sections as required. It is not polluting. Modern law also has such repetitions.

It is not at all impossible to have errors somewhere in the text. Because it is a completely human endeavor. Therefore, if any defect is found in anyone's eyes, it will be corrected if the publisher is kindly informed. At the same time, there was a request to inform the concerned department if there is any constructive proposal from the readers, especially those who are not interested in the legal profession. Finally, I would like to thank the authorities of the Islamic Foundation for undertaking such a great project. May Allah La Sharika Lahu

grant us the Tawfiq to complete the rest of the work accurately.
Amen.

Gazi Shamsur Rahman

President Islamic Law Legislation Board

Date: 6 Ramadan, 1415

The Importance of Islamic Law by the Editor

1.I am expressing Alhamdulillah to the great Allah (SWT) Without his grace, I got acquainted with the following Islamic scholars and got close to them. Going to them and gaining proximity to those who are so insignificant is great in my life
Receipt

2.Freedom is an invaluable resource for every nation. Similarly, the source of Islamic law, the Qur'an and the Hadith, is not only an invaluable resource for every Muslim man and woman, but they will be indifferent to its implementation in society. Freedom is a human right, this right is not seen; But the meaning is realized. It is objective; However, the rights are enshrined in the constitution. According to this constitution, the state is governed. And the Qur'an is the divine word. It has been revealed to the Prophet Muhammad (Sm) for 23 years. Allah Himself has declared its preservation in the Holy Qur'an.

3.In that Qur'an, all the possibilities have been created to reach the people of all religions of the world compiled with divine words. Millions of Hafez who memorize the Qur'an continue to carry its importance. But in the light of this Qur'an, the Prophet (peace and blessings of Allaah be upon him) described in his lifetime everything about how human beings should live on earth. Sometimes it came from his words. Sometimes it came from his life and life style

4.The Holy Qur'an has been revealed to the Prophet Muhammad (Sm). Since then it has been compiled into a book by the great Companions. Similarly, the hadiths have been compiled and edited by the Companions in a book. The author of the book Justice in the Eye of Islam is Mufti Dr. Sayed Nazrul Islam. He said that the total number of hadiths in the world are ... ,

Among them ... T Hadith Bithyat is found accurately in Hadith texts. It would not be appropriate to deny the truth among the rest. This Qur'an and Hadith is the basis of Islamic law which is a contribution and resource for the welfare of all mankind in the world. Constitution is the basic principle of government. Similarly, the Qur'an and Hadith are exemplary and followable for all for the welfare of the world mankind.

5. The author is very active in his long life from childhood to today, who is over ninety years old, and he is doing all the great work of Islam in his lifetime. The book Justice in the Eye of Islam is one of them. Inshallah, the book will be appreciated by the readers. But we will be proud of its introduction in the judiciary, that is, in the light of the Qur'an and the Sunnah, as soon as the practice in the judiciary begins.

6. The places of arrival of the admirable prophets of the Islamic tradition are marked in the Middle East. Spectacular architecture including mosques have been established there. Writer Dr. Sayed Nazrul Islam did not stop at seeing all those glorious places in the Middle East during his long life. He is the Khatib of special mosques there, the great Islamic scholars he has come in contact with. It is a matter of great pride; Some of his classmates are also colleagues. Because, he has been teaching at the University of Medina in Saudi Arabia for a total of ... years with long monotony and breaks. Studied at Al Azhar University. He has visited and visited important Islamic historical places in Syria, Jordan, Iraq, Iran, Yemen, Jerusalem, Egypt, Abu Dhabi, Pakistan, India etc.

7. The truthfulness and authenticity of the Qur'an is that what Allah's beloved Prophet (Sm) said is basically for the benefit of the human race of the world. I have no power to explain or comment on it. I can feel I know nothing. and and there is no power to say or do anything except Allah's blessings

8. Although the judicial system in our country has not yet developed in the light of the Qur'an and Sunnah; But the more the Qur'an is being read with meaning in the countries of the world, the more people are realizing it. The great Islamic scholars of the world are researching and trying to spread the significance of the Qur'an in their minds.

9. Although the judicial system in our country has not yet developed in the light of the Qur'an and Sunnah; But the more the Qur'an is being read with meaning in the countries of the world, the more people are realizing it. The great Islamic scholars of the world are researching and trying to spread the significance of the Qur'an in their minds.

10. Mufti Dr. Sayed Nazrul Islam, who is one of the Quran researchers and Islamic scholars. The work, 'Justice In the eye of Islam' is a work of deserving high praise. He reminds,

"11. Except for answering 5 questions on the Day of Resurrection, the child of Adam will not be able to move forward, no matter whether he is a Muslim or a non-Muslim. The questions are: 1. How did you spend your age? 2. How did you spend your youth? 3. How did you earn? 4. How did you spend the money you earned? 5. How did you apply the knowledge I gave you? It applies to everything from school college madrasa college education and Will apply to all people in the world."

12 He later received a post-doctoral degree at the University of Madinah on the subject of *Almawadul Quranul Karim Nahiya* (revolutions of the Holy Quran). His subject was *The Revolution of the Holy Quran*. Dr. was his guide. Abraham, who was an Egyptian.

PENAL CODE

In 1860, title of this law was "Indian Penal code". After independence, Pakistan was substituted for the word Indian. After independence of Bangladesh, the word Bangladesh was substituted for Pakistan by the Bangladesh laws (revision and declaration Act 1973) which was subsequently omitted by the adaptation of existing laws ordinance.

The Holy Quran was first revealed in 610 A.D in the cave of the Hira on Muhammad (S.M). It continued till the time of his death in 632 A.D. The Holy Quran was revealed throughout his life time for long twenty three years. The fundamental aim and principal cause of revelation of the Holy Quran were to guide the human societies of the universe in the right and straight path. Man was sent on the Earth from the Heaven as representative of Allah. Man is the best creation of Allah. So, the Holy Quran teaches, how they would grow up. The Quran says, "I have created men of the best stature". (Sura At Teen, 95:4)

Allah again says in the Holy Quran "Verily I have sent thee with the truth a bearer of glad tidings and a Warner and there is not a nation but a Warner hath passed among them. And verily I have sent in every nation a Messenger" (16 : 36).

So, the Holy Quran has given the human being the best provisions and the best elements of building life so that he may not go astray. We shall now review the Penal code of Bangladesh and the Quranic laws in the following paragraphs.

Speaking of the Director General

Man is the best creation of Allah. The Almighty Allah created man to worship Him. Man is expected to worship his Creator in addition to his daily life. God has sent innumerable prophets and messengers from age to age for the guidance of the human race. Among them, Hazrat Muhammad (Sm) is the last and the greatest. Through him, the rules that Allah Almighty has given for the orderly and improved life of the people are the Islamic laws. Since Islamic law is given by Allah, it is undoubtedly the most useful law for human beings in the world. Islamic law is the most modern and welfare oriented in terms of monotheism (Tawhid), prophethood (Risalat), religion, moral and human qualities. The scholarly community in the West has tried to call the whole framework of Islamic law "medieval" by reviewing the discussion of certain laws without evaluating the overall Islamic law. Some Western educated intellectuals and theorists of the Muslim society have drowned in this cycle of doubt. In this context, the need to present the form of Islamic legal framework in countries around the world through scientific analysis in a systematic way has been felt for a long time.

From the time of the Prophet (peace be upon him) for the next one and a half years, trials were conducted directly on the basis of the Qur'an and Sunnah. If there was no legal solution to the Qur'an and Sunnah, a joint decision would have been taken during the reign of Khulafa Rashedin. If there was no solution in this too, Ijtihad would be performed in the light of the Holy Quran and Hadith. However, since there is no legal form of Islamic law, differences among the ummah continue to grow. In this context, Imam Abu Hanifa (Rh) and his followers developed a comprehensive framework of Islamic law. Fatwa

Alamgiri was written and published in India in the seventeenth century under government patronage. There have been some such works in different languages of the world. But even if it is unpleasant, it is true that for a long time no reliable and significant book on Islamic law including Shariah has been published in Bengali.

In this situation, considering the need for statutory law based on Fiqh and Usul, the Islamic Foundation Bangladesh took initiative to publish a reliable book on 'Statutory Islamic law' by a board comprising of wise jurists and jurists of Bangladesh on criminal law, trade law and other customary law. The book was compiled (in three volumes) after long efforts and hard work. In it, the section of law and its analysis has been given in the light of Quran-Hadith. The rational views of other sects have been quoted elsewhere, mainly following the Hanafi school and in the context of the need for war. The book was first published by the Islamic Foundation Bangladesh in 1995 and has largely met the long-standing needs of the people of Bangladesh. At present, we are thankful to Allah for republishing this valuable book. May Allah accept our efforts. Ameen.

A. Z. M. Shamsul Alam
Director General
Islamic Foundation Bangladesh

PUNISHMENT FOR MURDER

Penal code section No. (302) Who ever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine.

Penal code section 302: Who ever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine.

Section 303: Whoever being under sentence of imprisonment for life commits murder shall be punished with death.

Section 304: Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine, if the act by which the death is caused or is done with intention of causing death or of causing some bodily injury is likely to cause death or with imprisonment of either description for a term which may extend to ten years or with fine or with both, if the act is done with the knowledge that is likely to cause such bodily injury as is likely to cause death.

In this respect the Quranic law or verdict is as follows. "Never should a believer kill a believer but (if it so happens) by mistake compensation is due. If one so kills a believer it is ordained that he should free a believing slave, and pay compensation to the family of deceased, unless they remit it freely, if the deceased belong to a people at war with you. And he was believer, the freeing of a believing slave (is enough)." (**Sura Nessa, 4:92**).

If he belonged to a people with whom you have a treaty of mutual alliance compensation should be paid to his family.

And a believing slave be freed, for those who find this beyond their means (is prescribed). A fast for two months running : by way of repentance to Allah: For Allah hath all knowledge and wisdom. If a man kills a believer intentionally, his recompense is Hell to abide there in (For ever); and the wrath and the curse of Allah are upon him and a dreadful penalty is prepared for him. **(Sura Nessa 4:93).**

Ye who believe! The law of equality is prescribed to you in cases of murder: The free for the free, the slave, for the slave the woman for the woman, but if any remission is made by the brother of the slain, then grant any reasonable demand and compensate him with handsome gratitude. This is a concession, and a mercy from your Lord. After this, whoever exceeds the limits shall be in great penalty. **(Sura Baqara 2:178).**

In the eye of Islam, homicide or suicide is a terrible crime that can not be forgiven. Character of a man should not be tainted by his sinful act. So, the Quran proclaims, "Whoever sleuth a believer of set purpose, his reward is Hell forever; Allah is wrongful against him and He has cursed him and prepared for him an awful doom." **(Sura Nessa 4:93).**

Again the Holy Quran warned, "And that you slay not the life which Allah hath made sacred save in the course of justice. This He hath commanded you in order that you may discern." **(Sura Anam 6:151)**

"We ordained, there in for them life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and wounds equal to equal. But if any one remits the relation by way of charity, it is an act of atonement for himself. And if any fail to judge, by (the light of) what Allah hath revealed they are no better than wrong doers. **(Sura Maidah 5:45)**

"Only the Laws of the Holy Quran can bring peace in the Universe".

With the evidence of Hadith of Mishkatul Masaabih:

QISAS - RETALIATION

In the terminology of Shari'ah (divine law), qisas implies: 'taking the life of the murderer.' If anyone has killed someone unjustly, then qisas is to kill him against the murdered.

The word is derived from (qis and qisas), the literal meaning of which is 'to follow someone.' To track, to trace. The guardian of the murdered person follows the murderer to kill him in retaliation for the murdered. This is why to take the life of the murderer is called qisas.

(Qisasat) means 'equality.' It is in the sense that when the murderer is killed in revenge for the murdered then the guardian gets even with the murderer, or the murdered and the murderer are quits with one another.

In qisas the murderer is treated in the same way as the murderer had treated the murdered.

BLOOD OF MUSLIM IS SACRED

3446. Sayyiduna Abdullah ibn Mas'ud (R) narrated that Allah's Messenger (Sm) said, "It is not lawful to shed the blood of a Muslim who testifies that there is no God but Allah and that I am Allah's Messenger, except for one of three things: (i) life for life (which is retaliation but according to the laws of Shari'ah (divine law)), (ii) a married man (responsible and free) who commits fornication, and (iii) a person who abandons his religion and deserts the community."

COMMENTARY: The Muslim is defined as one who testifies to Allah's unity and to Prophet Muhammad's (Sm) messengership. Anyone who simply recites the Kalimah shahadah (the words of testimony) is one whose blood is sacred and so unlawful to shed. If anyone who is not a Muslim, or who was not known to be a Muslim, merely gives a verbal testimony of Allah's unity and the messengership of Prophet Muhammad (Sm), then it is unlawful to shed his blood unjustly in the same way as of any known Muslim.

The gist of the hadith is that it is never allowed to shed blood of a Muslim unless one of these three reasons is found.

- (i) If a Muslim kills his Muslim brother unjustly then the principle of 'life for life' will apply.
- (ii) If a married Muslim who is responsible and free commits fornication then he is stoned to death. And,
- (iii) If a Muslim apostates then he is killed.

'The words in the hadith 'and deserts the community' emphasize the preceding words. If anyone apostates verbally, by deeds and by belief and so abandons Islam because of which he separates from the body of the Muslims then it is wajib (obligatory) to kill him unless he repents from his apostasy. The hadith mentions him as a Muslim because of his original outward appearance. It must be known that if a woman apostates then according to the Hanafis, she must not be killed.

MURDERER DEPRIVES HIMSELF OF DIVINE MERCY

3447. Sayyiduna Ibn Umar (R) narrated that Allah's Messenger (Sm) said, "A believer does not cease to remain in the wide confines of his religion till he sheds anyone's blood unjustly."

COMMENTARY: While every kind of sin and evil heads to a man's downfall in religion and manners and earns him Allah wrath, this hadith emphasizes that when he kills anyone unjustly, he comes out of the sphere of Allah's mercy. He then joins those who have no hope of the mercy of Allah.

RECKONING WILL BEGIN WITH BLOOD SHED

3448. Sayyiduna Abdullah ibn Mas'ud (R) narrated that Allah's Messenger (Sm) said, "The first thing for which reckoning will take place of the people on the day of resurrection will be blood shed.

COMMENTARY: Of the rights of fellow men, the first thing that will be taken into account and brought for judgment will be killing others. And, of the rights of Allah, the first thing to be judged will be salah (prayer). The more correct way to say this is that the first of the forbidden things to be judged on the day of resurrection will be bloodshed and of the prescribed things to be done will be salah (prayer).

RECITER OF KALIMAH MAY NOT BE KILLED

3449. Sayyiduna Miqdad ibn Al-Aswad (R) narrated that he asked, "O Messenger of Allah, what do you say: if I meet a disbeliever and we being to grapple one another and he strikes a hand of mine with his sword severing it, then he retreats to a tree for refuge from me and says, 'I have submitted myself to Allah' (or, 'I am a Muslim for Allah's sake')" - and, according to another version: "Just as I intend to kill him, he utters 'there is no God but Allah' - shall I kill him after he utters these words?" He said, "Do not kill him." But, he pleaded, "O Messenger of Allah, he did sever one of my hands." Allah's Messenger (Sm) said, "Do not kill him. If you kill him, then he will gain the

place which you were occupying before killing him, and you will go down to the place which he was occupying before he spoke the Kalimah (or the testimony that he made)."

COMMENTARY: The Prophet's (Sm) words meant: "If you kill him after he recites the Kalimah (there is no God but Allah) then just as you were innocent of killing before killing him, he becomes innocent of bloodshed after embracing Islam. And, you would take his place and would become 'not innocent of blood.'" Or, formerly, it was allowed to kill him, but not now. And it would be correct to kill you!

3450. Sayyiduna Usamah ibn Zayd (R) narrated that Allah's Messenger (Sm) sent them to some people of (the tribe) Juhaynah (to fight them). (And, Usamah (R) said:) I came upon one of them and was about to strike him with the spear when he declared (there is no God but Allah). But, I pierced him with the spear and killed him. Then when I came to the Prophet (Sm), I informed him (about it) and he asked, "Did you kill him after he did testify that there is no God but Allah?" I said, "O Messenger of Allah, he did that as an excuse to protect himself." He asked, "Then why did you not split his heart?" (and see).

3451. The version of Jundub ibn Abdullah Bajali (R) is that Allah's Messenger (Sm) asked, "How will you cope with 'la ilaha illallah' (the testimony) when it comes (to you) on the day of resurrection?" (on behalf of him to contend with you?) He spoke these words very often.

COMMENTARY: When Sayyiduna Usamah (R) said that the man had recited the kalimah to save his skin, the Prophet (Sm) asked him, "Why did you not find out what he had in his heart? You ought to have seen what his intentions were? You could not do that, so you should have gone by the apparent. The

man's reciting the Kalimah was enough. However, bloodwit was not binding on Usamah because he had erred in ijtihad (extracting rulling of Islamic law).

DO NOT KILL ONE WHO IS PROTECTED

3452. Sayyiduna Abdullah ibn Amr (R) narrated that Allah's Messenger (Sm) said, "He who kills anyone under a treaty of protection will not perceive the fragrance of paradise though its odour may be perceived at a distance of forty years journey."

COMMENTARY: The Arabic text has the word muahid. He is disbeliever who has covenanted with the ruler of the Islamic territory not to engage in hostilities. He may be a dhimmi or otherwise.

This hadith says of the fragrance of paradise that it is perceived to a distance of forty years. But, there are other ahadith that give different years: seventy, one hundred, five hundred and one thousand years. It seems that they depend on people, deeds and ranks. Thus, in the place of gathering, some people will get the odour from a distance of one thousand years, some five hundred years, some one hundred years some seventy years and some forty years.

Moreover, these numbers do not mean to restrict the limit. They simply show the length to which the smell will reach. Besides, if anyone does not perceive its fragrance then it does not follow that the person will never sense it. Only in the beginning, he will not get it but after the ones near and dear to Allah and the scholars get it, he will perceive it. This hadith severely condemns the killing of a person who is under a treaty of protection.

SUICIDE SEVERELY PUNISHABLE ACT

3453. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "He who flings himself down from a mountain and so kills himself will continue to be flung down in hell-fire and will abide therein for ever and ever. He who sips poison and so commits suicide will have his poison in his hand and will sip it for ever and ever in the fire of hell. He who slays himself with a piece of iron (like a knife) will have that weapon in his hand and with it he will stab himself in the belly in the fire of hell for ever and ever. (He will abide therein forever.)

COMMENTARY: The hadith says that if a person commits suicide in this world with anything then he will be punished with the same thing in the hereafter forever. Of course, this applies to those who do it with the conviction that suicide is lawful. So, they will be punished forever and ever. Or, it could mean that they who commit suicide will suffer punishment for a long time.

3454. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "He who strangles himself (to commit suicide) will strangle himself in hell too. He who stabs himself with a spear will spear himself in hell too."

3455. Sayyiduna Jundub ibn Abdullah (R) narrated that Allah's Messenger (Sm) said, "Among those who were before you was a man who suffered a wound (some how) by he had little patience to endure it (the pain seemingly unbearable to him). He took a knife and cut off the (wounded) hand. The blood did not stop flowing out till he died. Allah, the Exalted, said, 'My slave strove to be first ahead of me in taking his life (and killed himself). So, I have forbidden to him paradise.'"

COMMENTARY: Allah will forbid him entry into paradise if he had believed that suicide is lawful. In that case, he considered an unlawful thing to be lawful which amounts to disbelief and so admittance to paradise is forbidden to him. Or, he will first undergo punishment in hell and will be deprived of the company of the successful in paradise till he has gone through his punishment.

SUICIDE IS UNLAWFUL & FORBIDDEN: Suicide is not permissible in any civilized society. For, is man the owner of himself, his visible and invisible self? Or, somebody else owns these things?

It is a confirmed fact that man is not his own master. His existence in this world is a trust for himself and for the people of the world. His Master is the Being who created him and brought him into this world. Then, is it not treachery that man hurts his own existence? It is a great crime, and a grave sin. No creature has a right to misuse the Lord's property.

This is why Shari'ah (divine law) has forbidden suicide and termed it as a grave sin. It says that one who perpetrates it will undergo a painful chastisement.

A DIDACTIC EVENT ABOUT SUICIDE

3456. Sayyiduna Jabir (R) narrated that when the Prophet (Sm) emigrated to Madinah, Tufayl ibn Amir Dawsī (R) also emigrated to it. With him a man of his tribe also emigrated but (by a coincidence) he fell ill and became impatient and taking some of his arrowheads, he cut his knuckles. Because of that both of his hands bled profusely till he died. Later, Tufayl ibn Amir (R) saw him in a dream. He had a good outlook, but he saw him concealing his hands. He asked him, "How did your Lord treat you?" He said, "He forgave me because of my hijrah

(emigration) to His Prophet (Sm).” Then, he asked, “Why do I see you concealing your hands?” He said, “I was told, ‘We shall not set right what you had spoilt yourself.’”

Tufayl (R) narrated it to Allah’s Messenger (Sm). And, Allah’s Messenger (Sm) prayed, “O Allah, and his hands too, do forgive.”

COMMENTARY: There is great blessing in emigrating to Madinah. Allah forgives the person emigrating. If he has committed sin, he is forgiven that too because of the Prophet’s (Sm) seeking forgiveness for him.

It is established through authentic ahadith that if anyone visits his grave then it is tantamount to having seen him physically during his life-time. Therefore, the blessings and mercy of Allah that were bestowed on those who visited him when he was alive should be expected also by those who visit his grave.

This hadith also discloses that perpetrating a grave sin neither classifies one as a disbeliever nor consigns one to the perpetual punishment of hell. It is the conviction of the ahl us-sunnah (Prophet’s (Sm) practice) wa al-jama’ah that, after serving punishment for his major sin, a person is admitted to paradise.

QISAS OR DIYAH FOR HEIRS OF MURDERED

3457. Sayyiduna Abu Shurayh al-Ka’bi (R) narrated that Allah’s Messenger (Sm) said (during the sermon on the day of the conquest of Makkah and its initial portion has been presented in the chapter on the Haram of Makkah and its concluding words, “O Khuza’ah, you have killed this man of Hudhay. By Allah, I shall pay his blood wit. But, henceforth, if anyone kills a man, his people (meaning, his heirs) will have a choice (between two things):

(i) to kill him, if they wish (in retaliation, or

(ii) to accept blood wit, if they wish.”

(Sharh us sunnah (Prophet’s (Sm) practice) states that it does not occur in Bukhari and Muslim from Abu Shurayh (R))

3458. Sayyiduna Abu Hurayrah (R) narrated something similar.

COMMENTARY: During the pre-Islamic days, the tribe Hudhayl had killed a man of the tribe khuza’ah. In retaliation, they killed a man of the Hudhay. To prevent further trouble between the two tribes, the Prophet (Sm) paid the blood wit for this murdered man as he said (and is quoted in the hadith). Then he mentioned the Sahri’ah law for this kind of thing, which is to choose one of two things: retaliation or blood wit. Imam Shafi’I (Rh) and Imam Ahmad (Rh) abide by this hadith. Imam Abu Hanifah (Rh) and Imam Maalik (Rh) say that the heirs of the dead person will have a right to claim blood wit from the murderer, only if he is willing to pay it. But, should he refuse to pay it, then they have no choice other than killing him. It is said that Imam Shafi’I (Rh) also holds this opinion. In the end the compiler of Mishkat objects to Imam Baghavi (Rh) the comiler of the Masabih for presenting this hadith in section I though it is not found in Bukhari (Rh) or Muslim. Only ahadith of these two, or one of them, are reproduced in Section I.

MALE MURDERER OF WOMAN MAY BE KILLED

3459. Sayyiduna Anas (R) narrated that a Jew crushed a girl’s head between two stones. She was asked (for her dying testimony), “Who did it to you?” Some names (of the suspects) were taken and when the Jew was named, she beckoned confirmation with her head. The Jew was brought and he confessed to it. Allah’s Messenger (Sm) commanded that his head should be crushed with stones.

COMMENTARY: If a woman murders a man, she may be killed in retaliation and if a man slays a woman, he may be put to death in retaliation. Killing someone with a heavy stone makes retaliation liable. Imam Abu Hanifa (Rh) does not agree with the three other imams and says that here qisas does not become liable. He says about the Jew that his case had some transient reasons behind it.

PUNISHMENT COMMENSURATE WITH WRONG DONE

3460. Sayyiduna Anas (R) narrated that (Sayyidah) Rubaiyi (R), the paternal aunt of (Sayyiduna) Anas Ibn Maalik (R) broke the front tooth of a girl of the ansar. They (her family) went to the Prophet (Sm) (with the complaint). He ordered that retaliation must be taken. Anas ibn Nadr (R) the paternal uncle of Anas Ibn Maalik (R) said, “O Messenger of Allah! No, by Allah, her tooth will not be broken.” He said, “O Anas, the Book of Allah prescribes qisas (retaliation).” But, (Allah decreed that) the family (or the girl) were willing to accept the diyah (Monetary compensation). So, Allah’s Messenger (Sm) said, “Surely, there are among the slaves of Allah, they who adjure Allah and He agrees to it.”

COMMENTARY: Rubaiyi (R), Anas (R) and Maalik (R) were three brothers and sisters. Their father was Nadr. The son of Maalik (R) was also named Anas. Anas ibn Nadr (R) hoped for Allah’s mercy and favour that He would put into the hearts, of the girl’s family to accept monetary compensation. Indeed, that is what happened. So, the Prophet (Sm) said of him that he was among those whose prayers Allah accepts.

The reference to Allah’s Book about retaliation is about this verse:

{And therein we prescribed for them: a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth...} (5:45)

This hadith says that it is allowed to take an oath for such things as one is hopeful would come true.

It also says that it is allowed to praise anyone in his presence, provided he is not likely to get it into his head.

This hadith teaches us also that it is mustahab (desirable) to for give qisas.

MUSLIM WHO KILLS A DISBELIEVR - MAY OR MAY NOT BE KILLED

3461. Sayyiduna Abu Juhayfah (R) narrated that he asked Sayyiduna Ali (R) “Do you have anything that is not found in the Quran?” He said, “By Him Who split the seed and created the soul, I have noting that is not found in the Qur’an, beyond an understanding of His Book that a man is given (and which I am given) and that which is (written) on sheets of paper (which we have)” He (Abu Juhayfah (R)) asked, “And what is (written) on the sheets of paper?” He said, “Blood wit (for unjust killing), setting free of a prisoner and not killing a Muslim for a disbeliever (who is a dhimmi - these things are written on the sheets of paper).

COMMENTARY: Sayyiduna Ali (R) said that he had an understanding of the Qur’an and could fathom its deep mystic meanings. He could deduce from it commands and rulings such as learned ulama (Scholars) could uncover.

He had written down about blood wit and other things and kept the parchment in the sheath of his sword. Many commands and rulings were recorded on those sheets of paper. Not all are mentioned here.

MUSLIM KILLER: It is the contention of many of the sahabah (Prophet's Companions) (R), the tabi'un (Rh), the tabi tabi'un (Rh) And three of the imams (Rh) that if a Muslim kills an infidel then he will not be killed in retaliation for the slain infidel, whether he is dhimmi or an enemy at war. But, Imam Abu Hanifah (Rh) and most of the ulama (Scholars) contend that if the slain infidel was a dhimmi then the murderer Muslim may be killed. The hadiths which they cite is mentioned in the Mirqat.

WHY DID HE ASK: The reason Sayyiduna Abu Juhayfah (R) asked Sayyiduna Ali (R) was that the shiah who were found in those times in different forms used to allege that the Prophet (Sm) had disclosed to his ahlul bayt (people of the house), particularly Ali, certain secrets and details of the science of revelation that have not been disclosed to anyone else.

Another possibility why he put that question was that in those days of Sayyiduna Ali (R) there was no one who could match him in learning and knowledge.

Anyway, Sayyiduna Ali (R) said on oath that there was no such thing as they imagined. The prophet (Sm) had not taught him anything at the exclusion of others and had not preached to him more than he had preached anyone else. He said that he had the same Qur'an which everyone read and he had those written down instructions. Apart from that, he had a power of understanding that Allah had bestowed on him. With that he could get to the inner meaning of the Qur'an. This was not his own achievement but Allah enabled him and gave him wisdom to fathom that.

In short, the base of all sciences and meanings is the Qur'an. So if anyone is bestowed power to understand it then the gates of

all sciences and wisdom are opened to him. But, Allah bestows this blessing on very few people.

Sayyiduna Ibn Abbas (R) used to say that all the sciences are found in the Qur'an, but people generally do not reach to that level of understanding.

And the hadith of Ibn Mas'ud (R) on no life may be taken unjustly may be found in the Book of knowledge (#211)

BLOOD OF MUSLIM IS SACRED

3462. Sayyiduna Abdullah ibn Amr (R) narrated that the Prophet (Sm) said. "The end of the world is less serious in the sight of Allah than the killing of a Muslim man."

3463. Sayyiduna Bara ibn Aazib (R) narrated it.

COMMENTARY: Allah has created everything of the world, the earth, the heaven and the entire universe for the Muslims. They may, therefore, worship their Lord and believe in His Omnipotence.

In the light of this, if anyone kills a Muslim for whom this universe is created then he is like one who consigns the entire world to destruction. It is to this that a verse of the Qur'an points out:

{And whoever slays a human being for other than manslaughter, or for (spreading) corruption in the land, it shall be as if he had slain all mankind.} (5:32)

3464. Sayyiduna Abu Sa'eed (R) and Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "If (it is confirmed that) the inhabitants of the heaven and earth have combined to shed blood of a believer, then Allah would cast them face down in hell."

COMMENTARY: Some exponents suggest that the word in the Arabic text (la kabbahum) should have been (lakabbahum) but Mulla Ali Qari (Rh) says that it is correct. [The words in Jami Saghir].

COMPLAINT OF THE MURDERED ON THE DAY OF RESURRECTION

3465. Sayyiduna Ibn Abbas (R) narrated that the Prophet (Sm) said, "On the day of resurrection the murdered person will bring the murderer with his forelock and his head in his hand, blood dripping from his own jugular vein. He will complain, "O my Lord, he killed me." (Get me justice.) He will bring him (dragging him like that) till he is near the throne."

COMMENTARY: On the day of resurrection, the slain person will claim his right and Allah will please him.

UTHMAN'S (R) SPEECH ON THE DAY HE WAS OPPRESSED

3466. Sayyiduna Abu Umamah (R) ibn Sahl ibn Hunayf narrated that (Sayyiduna) Uthman ibn Affan (R) climbed up the roof top of his house on the day of ad-dar (when he was besieged by those who wrought mischief). He asked (the besiegers), "I adjure you by Allah, do you know that Allah's Messenger (Sm) said, "The blood of a Muslim is forbidden except for one of three reasons:

- (i) Fornication committed by a married man,
- (ii) Apostatising after embracing Islam,
- (iii) Slaying someone without just cause,

he may be killed for one of these reasons?' By Allah, I have not committed fornication either during jahiliyah (ignorance

period) or after the coming of Islam. I have not apostatised since having sworn allegiance to Allah's Messenger (Sm). And, I have not slain any soul whom Allah has declared sacred."

COMMENTARY: The day of (or yawn) ad-dar means the day of the house. It refers to the days on which the rebels had besieged the house of the third caliph Sayyiduna Uthman ibn Affan (R). One of those days, he went up the roof of his house and spoke the foregoing words to the rebels.

As for committing fornication after marriage, if a married person commits adultery then Shari'ah (divine law) prescribes that he should be stoned to death. The Arabic word for a married person' as used in the hadith is (ihsan and Muhsin) stands for a Muslim, freeman, responsible who has married legally and consummated marriage with his wife. The actual words of the hadith meaning what Allah's Messenger (Sm) said ... (The blood of a Muslim ... one of these reasons) are the only ones in Darimi, but not Uthman's (R) words in the beginning or the end.

KILLER IS DEPRIVED OF GOOD

3467. Sayyiduna Abu Darda (R) narrated that Allah's Messenger (Sm) said, "The believer does not cease to go ahead rapidly towards piety (engaged in giving the rights of Allah and of His slaves) till he does not shed blood unjustly. But, when he sheds blood unjustly he is fatigued."

COMMENTARY: As long as a believer does not stain his hands with blood of someone, Allah keeps him engaged in piety and goodness, outstripping other. If he kills anyone then he loses the ability to do pious work. The heart of the murderer becomes dark with black stains. While all sins are punishable, this sin is more grave.

UNJUST KILLING IS UNFORGIVABLE

3468. Sayyiduna Abu Darda (R) narrated that Allah's Messenger (Sm) said, "It may be hoped that Allah will forgive every sin, except (the sin of) one who dies a polytheist, or one who kills a Muslim deliberately."

3469. Sayyiduna Muawiyah (R) also narrated this hadith.

COMMENTARY: According to this hadith just as polytheism is unforgivable, so too wilful killing is unforgivable. However, the ahlus-stmnflr (Prophet's (Sm) practice) wa al-jama'ah say that a killer would undergo severe punishment for a long time before being forgiven. They cite this verse:

{Surely Allah forgives not the setting up of peers for Him; for anything less than this, He forgives whomsoever He pleases.} (4:48)

As for this hadith, it means to emphasize how serious a crime it is to kill someone and what a severe chastisement it invites. It could also mean that if anyone kills a Muslim believing it to be lawful, then he will not be pardoned. Besides, the word (deliberately) could also imply killing a believer because he is a believer. If anyone does that then he will not be forgiven.

RETALIATION MAY NOT BE SOUGHT FROM FATHER FOR HIS CHILDREN

3470. Sayyiduna Ibn Abbas (R) narrated that Allah's Messenger (Sm) said. "The prescribed punishment must not be imposed in mosques and a father must not be killed for (killing) a son." (Rather, diyah may be imposed on him. It is a monetary penalty.)

COMMENTARY: No punishment for adultery, theft, etc may be enforced in the mosques. The same applies to qisas or

retaliation for murder. The reason is that mosques are meant to offer salah (prayer) or to make dhikr or acquire or impart religious knowledge. If a father kills his son then he should not be killed in retaliation.

The juristic verdict is that if a son kills his parents then he maybe killed in retaliation. This is the unanimous verdict of all the ulama (Scholars).

But, if any of the parents kill their son then the ulama (Scholars) differ on the verdict. Imam Abu Hanifah (Rh) & Imam Shafi'I (Rh) and Imam Ahmad (Rh) hold that a father must not be killed in retaliation. But, Imam Maalik (Rh) holds that if a father slaughters his son then he may be killed in retaliation, and if he kills him with a sword then retaliation must not be seized from him. It must be remembered that the same command applies to a mother as to a father. Grand parents whether paternal or maternal attract the same command as father and mother do.

NEITHER FATHER NOR SON WILL BE PUNISHED FOR OTHER'S WRONG

3471. Sayyiduna Abu Rimthah (R) narrated: I came to Allah's Messenger (Sm) with my father. He asked, "Who is he with you?" He said, "My son! Be witness to it." He said, "Know! He will not involve you (in punishment) because of his sins, nor will you involve him because of your sins."

The version in Sharh us-sunnah (Prophet's (Sm) practice) has these words too in the beginning: Abu Rimthah (R) narrated: I went in with my father to meet Allah's Messenger (Sm). When my father observed what was on the back of Allah's Messenger (Sm), (he did not realize that it was the seal of Prophet hood, so) he said, "Let me treat what is on your back, because I am a

physician.” He said, “You are but a rafiq. The Physician is only Allah.”

COMMENTARY: Ibn Rimthah (R) asked the Prophet (Sm) to bear witness that the boy was his son. His purpose was to say that if he committed a wrong then his son could be taken to task as was the custom during the jahiliyah (ignorance period). Father and son could be called to account for one another’s wrongs. But, Allah’s Messenger (Sm) made it clear to him that neither of them will have to answer for the other’s wrongs. That was an unjust custom during the jahiliyah (ignorance period).

Abu Rimthah’s (R) father claimed to be a physician and a wise man. His words smacked of poor intelligence and bad manners. The Prophet (Sm) corrected him, “You are only a rafiq,” meaning, ‘you only give a prescription on the outward condition and are mild the patient and suggest what he should do and from what he should abstain. But you have nothing in your power. Only Allah is the True Physician. He heals and knows the inner condition. No one else, howsoever great, can give cure.’

SON LIABLE FOR FATHER’S QISAS

3472. Sayyiduna Amr ibn Shuayb (R) narrated from his father, from his grand father that suraqah Ibn Maalik (Rh) narrated that he was present when Allah’s Messenger (Sm) would take retaliation from a son for his father, but he did not take retaliation from a father for his son.

COMMENTARY: If a son killed his father, then in retaliation the son was killed. But, if a father killed his son, then he was not killed in retaliation but blood wit (or monetary penalty) was taken from him.

IS THERE QISAS FROM FREEMAN FOR SLAVE

3473. Sayyiduna Hasan (Busri) (RH) reported that (Sayyiduna) Samurah (RH) narrated that Allah’s Messenger (Sm) said. “If anyone kills his slave, then we shall kill him (in retaliation) and if anyone maims his slave then we shall maim him.

COMMENTARY: The prophet (Sm) said this by way of a severe warning so that people may desist from killing their slaves. It is like when a man did not give up wine in spite of severe warning, so the Prophet (Sm) said, “Kill him!” But when he was brought to him, he did not kill him.

Some people say that the slave mentioned in this hadith is the one who was set free after slavery. He is no more called a slave, but, here, reference is to his previous life.

Some others say that this hadith stands abrogated by the verse:

{...the free man for the free man and the slave for the slave...} (2:178)

Imam Abu Hanifah (Rh) said that if anyone kills someone else’s slave than he will be killed in retaliation. But, he will not be killed in retaliation if he kills his own slave. The other three imams hold that no free man will be killed in retaliation for a slave whether his own or another’s. They cite the verse (2:178) mention in the preceding lines. Ibrahim Nakha’I (Rh) and Sufyan Thawri (Rh) contend that a free man will be executed for killing a slave belonging to him or to anyone else.

As for maiming, it is stated in Sharh us-sunnah (Prophet’s (Sm) practice) that all the ulama (Scholars) agree that if a free man maims a slave then the free man will not be maimed in retaliation.

This means that the words of the Prophet (Sm) in this hadiths were either by way of a serious warning or are abrogated.

MURDERER BE GIVEN IN THE CUSTODY OF HEIRS

3474. Sayyiduna Amr ibn Shuayb (R) narrated from his father who from his grand father that Allah’s Messenger (Sm) said, “If anyone slays a believer willfully then he must be handed over to the heirs of the slain. They may kill him (in retaliation) or take blood money (from him). It (blood money) is thirty she-camels in their fourth year, thirty she-camels in their fifth year and forty pregnant camels, and that which the heirs have decided with him. (The right of the heirs is as mentioned but if they consent to a smaller amount then only that will be wajib (obligatory) on the murderer.)

COMMENTARY: Diyah, or blood wit is the compensation paid to the heirs for killing their relative. Imam Shafi’I (Rh) and Imam Ahmad (Rh) go by this hadith. Imam Abu Hanifah (Rh) and Imam Abu Yusuf (Rh) say that the one hundred camels of diyah should be made up in this manner:

- Twenty five bint makhad,
- Twenty five bint labun
- Twenty five bint hiqqah, and
- Twenty five bint jaza’ah.

They go by the hadith of Sayyiduna Sa’ib ibn Yazid (R) that the Prophet (Sm) had commanded that four kinds of camels should be given (against blood money). If this hadith was sound, the sahabah (Prophet’s Companions) (R) would have acted on it unanimously.

(The terms used in this commentary are explained here under:)

Bint makhad: she-camel in 2nd year.

Bint labun: she-camel in 3rd year

Hiqqah: She-camel in 4th year.

Jaza'ah: She-camel in 5th year

Ibn makhad: (he) camel in 3rd year

Khalifah: pregnant camel.

ALL MUSLIMS ARE EQUAL AS REGARDS QISAS & DIYAH

3475. Sayyiduna Ali (R) narrated that the Prophet (Sm) said, "All Muslims are equal in (the application of) qisas and diyah (retaliation and blood money). The humblest of them may offer protection and the most distant holds a right, and all Muslims are like one hand. (This means that all Muslims are helpers of each other against non-Muslims. They must remain united against others as though parts of one hand that work together.) And, beware! A Muslim must not be killed for an unbeliever, and one who is under a covenant (meaning, a dhimmi) must not be killed as long as he is under the covenant (and protection).

3476. Sayyiduna Ibn Abbas (R) narrated the same hadith.

COMMENTARY: In seizing retaliation or paying blood money, all the Muslims are equal: the noble and the humble, the young and the old, the learned and the ignorant, the rich and the poor, and the male or female. There is no distinction in applying qisas and diyah. It is not as was done during the jahiliyah (ignorance period) when an influential person could not be executed in retaliation if he had killed a humble man, but a few men of his tribe who were subordinate to him were put to death instead of him.

As for giving protection, even a humble Muslim may give protection to an infidel. This humble Muslim may be a slave or a woman. When he extends protection to a non-Muslim,

all other Muslims are bound to honour it and protect the life and property of the non-Muslim. They must not break the protection.

THE MOST DISTANT....: The next sentence about the most distant holding a right could be interpreted in two ways.

(i) If a Muslim who resides far away from enemy territory has given protection to an infidel, then it is not allowed to the Muslims who reside near the enemy territory to violate this man's (covenant of) protection.

(ii) When an army of the Muslims enters enemy territory and their amir (Commander) dispatches one unit to another side and they (win and collect some booty then that booty will not belong only to this unit but will be shared by the entire army.

TILL UNDER COVENANT: The concluding words are 'as long as he is under the covenant mean that till the infidel goes on paying the jizyah and remains a faithful citizen of the Islamic state, he will be protected. No Muslim should kill him but must regard it as a responsibility to protect him. This shows that in Islamic law a dhimmi's blood is as precious as a Muslims. Hence, if a Muslim kills a dhimmi unjustly then the murderer Muslim must be killed in retaliation. This is the contention of Imam Abu Hanifah (Rh).

The words of the hadith that a Muslim may not be killed for an unbeliever refer to the unbeliever at war not a dhimmi.

Thus, according to Imam Abu Hanifah (Rh) a Muslim must not be killed in retaliation for a disbeliever at war (an enemy disbeliever), but a Muslim may be executed for a dhimmi (in retaliation).

Imam Shafi'I (Rh) said that a Muslim may not be killed in retaliation for any disbeliever, enemy at war or dhimmi.

RIGHT OF HEIRS OF THE SLAIN OR THE WOUNDED.

3477. Sayyiduna Abu Shurayh al-Khuza’I (R) narrated that he heard Allah’s Messenger (Sm) say, “If anyone is afflicted with a (relative’s) killing (unjustly) or a wound (by severing a limb, for instance), then he may choose one of three things but if he demands (apart from these) a fourth thing, then hold him by his hand (and prevent him from demanding the fourth thing. The three things are:) (i) he may seize retaliation, (ii) he may forgive, or (iii) he may accept (monetary) compensation. If he chooses one of these and afterwards asks for more (like having forgiven, he then demands retaliation or compensation), he will go to hell to abide therein for ever, never to be taken out.”

COMMENTARY: The concluding words in the Arabic text are (khalidan feeha mukhalladan). They convey a strong emphasis: for ever, abiding, never to come out. The emphasis is to warn strongly. The same words were used in an earlier hadith (#3453).

ACCIDENTAL KILLING

3478. Sayyiduna Tawus (Rh) reported that Ibn Abbas (R) said that Allah’s Messenger (Sm) said, “If anyone is killed by mistake when people throw stones, or beat with whips, or strike with a stick (and the killer cannot be identified), then this is an accidental death (and there is no sin committed because it is not intentional). The diyah for it is as for an accidental killing.

And, if anyone kills deliberately, then retaliation becomes wajib (obligatory). If anyone hinders the seizing of retaliation, then on him is Allah’s curse and wrath and neither his supererogatory acts nor his prescribed acts will be accepted from him.

COMMENTARY: If anyone is surrounded by two warring groups or is a passerby, for instance, and happens to be killed by a stone thrown by the disputants then no retaliation is due but diyah as for accident will be payable. Here, stoning is mentioned as an example. It could be anything else that causes death. The jurists call it (shibh amd) or a quasi-deliberate intent, Imam Abu Hanifah (Rh) defines it thus; 'The killing that occurs with something that is not sharp and such as normally death does not result from it.' The two disciples.-

(of his) and Imam Shafi'I (Rh) it however, define shibh amd as a killing that results with intent with such a thing which does not normally cause death. If death occurs with such a thing that is used to kill generally then that is (intentional killing - qatl amd). Imam Abu Hanifah (Rh) says of the things mentioned in the hadith, (stone, stick) that they are mentioned in their literal sense and maybe light weight or heavy. The two disciples and Imam Shafi'I (Rh) maintain that these things mentioned in the hadith stand for lightweight objects (not heavy).

In other words, if anyone is killed with something that is heavy, then according to:

- (i) Imam Abu Hanifah (Rh) qisas (or retaliation) is not wajib (obligatory), but & according to
- (ii) The two disciples and Imam Shafi'I (Rh) the forgoing explanation is valid.

If anyone obstructs the heirs of the slain person from demanding retaliation then he is warned seriously that he calls for Allah's anger.

KINDS OF MURDER: The jurists say that there are five kinds of murder:

- (i) Qatl amd or willful killing.

- (ii) Qatl shibh amd or quasi-deliberate intent or murder that resembles intentioned murder.
- (iii) Qatl Khata or accidental murder.
- (iv) Qatl jari mujri khata or accidental murder unknowingly.
- (v) Qatl bisabab or indirect murder.

These are elaborated here:

(I) WILLFUL OR DELIBERATE KILLING: A person is murdered with something that snaps off the limbs. It may be a weapon or a stone, stick or a sharp-edged weapon with a spark. The two disciples define willful killing thus: A person is slain intentionally with such a thing with which a person is generally killed. One who commits wilful murder is a great sinner. The punishment of this murder is qisas (which is to execute the murderer in retaliation of the murdered) unless the heirs of the murdered person forgive him, or agree to take the diyah (or monetary compensation). In this expiation does not become wajib (obligatory).

(II) QUASI-DELIBERATE INTENT OR MURDER THAT RESEMBLES INTENTIONAL MURDER: It is to deliberately strike someone with something other than the aforementioned things (like a weapon or a sharp-edged thing, etc.). Even this kind of killing (because of neglecting the best course and lack of prudence) is sinful. In this, there is no retaliation but it is wajib (obligatory) on the tribe of the slayer to pay diyah mughallazah (which is paying one hundred camels of four kinds.). However, if no one is killed, but the person concerned is wounded then qisas is wajib (obligatory) in the sense that if any limb of that person is severed then a corresponding limb of the person striking him will be cut off.

(III) ACCIDENTAL MURDER: It is of two kinds.

(a) Accident is related to intention. For example, a hunter aimed at a game but that turned out to be a man, or he aimed at an enemy but he was his own co-religionist, a Muslim.

(b) Accident is related to a (wrong) action. For instance, a man aims at a target, but misses and hits a man.

(IV) ACCIDENTAL MURDER UNKNOWINGLY: For example, a man might fall in his sleep over another man who dies because of the crash. Expiation is binding in both cases: (iii) accidental murder and (iv) accidental murder unknowingly. Also, diyah is wajib (obligatory) on the tribe of the (accidental) murderer in both cases. Moreover, in these cases (because of negligence) sin also is committed.

(V) INDIRECT MURDER: An example of this kind is that man has a well dug on another person's land without his permission, or places a stone thereon. A passerby falls in the well or stumbles on the stone and happens to die. In this case, diyah becomes wajib (obligatory) on the tribe (of the man responsible for the accident). However, no expiation is payable.

INHERITANCE: It must be known that in the first four cases, namely amd, shibh amd, khata and jari mujri khata, the murderer is deprived of the inheritance of the murdered (if he is an heir).

In the fifth kind, qatl bisabab, the murderer will not be deprived of inheritance of the murdered.

KILLING THE MURDERER AFTER RECEIVING DIYAH IS UNPARDONABLE SIN

3479. Sayyiduna Jabir (R) narrated that Allah's Messenger (Sm) said. "I shall not forgive anyone (of the slain person's guardians or heirs) who kills (the murderer) after receiving

(from him) the diyah (blood money).” (Rather I shall kill him in retaliation.)

REWARD FOR FORGIVING ONE WHO WOUNDS

3480. Sayyiduna Abu Ad-Darda (R) narrated that he heard Allah’s Messenger (Sm) say, “If anyone is wounded on his body and pardons it, then Allah raises him a degree for it and removes from him a sin. (Tirmidhi part of lengthy hadith)

IT MUCH KILL RETRIBUTION WILL BE IMPOSED ON ALL

3481. Sayyiduna Sa’eed ibn Musayyib (Rh) narrated that (Sayyiduna) Umar ibn Khattab (R) executed five or seven men who had killed one man treacherously. And he said, “If the people of San’a had colluded to kill him, surely I would have killed them all.”

3482. Sayyiduna Ibn Umar (R) narrated the like of it.

COMMENTARY: Perhaps those killers belonged to San’a the present capital of Yemen. Besides, the Arabs were used to name it to express a large number. This hadith is evidence that all killers of one man will be subject to retribution.

THE MURDERED WILL NAB THE MURDERER & COMPLAIN TO ALLAH

3483. Sayyiduna Junbub (R) narrated tht a certain sahabi (R) narrated to him that Allah’s Messenger (Sm) said, “On the day of resurrection, the slain man will bring the one who had slain him and say (to Allah), ‘Ask him why he had slain me?’ He (the slayer) will say, ‘I had killed him for the property of so-and-so.’” Jundub (R) said, “Keep away from it!”

COMMENTARY: The slayer's words could also mean 'I had killed him in the territory of so-and-so, but then the answer is not according to the question.

Jundub (R) advised people to refrain from killing Teebi (Rh) said that Jundub (R) had narrated this hadith to a king and had advised him to refrain from killing or abetting in that.

WARNING AGAINST ASSISTING SLAYER

3484. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "He who helps in killing a believer even by exhorting (the killer) by half a word (saying only ki instead of kill), will meet Allah with the inscription on his forehead, 'Despairs of Allah's mercy.'"

COMMENTARY: Killing a Muslim is like disbelief in the gravity of sin it invites. The words, 'despairs of Allah's mercy' suggest it, because of the verse:

{...none but the unbelieving despair of the mercy of Allah.} (12:37)

This man will be disgraced with this symbol among the people on the day of resurrection. We must bear in mind that either these words spell a severe warning against such action or they apply to one who abets in this crime and regards his doing as lawful.

HELPER OF KILLER BE ARRESTED

3485. Sayyiduna Ibn Umar (R) narrated that the Prophet (Sm) said, "When a man clutches another man and yet another kills him, he who kills will be killed and he who clutches him will be imprisoned."

COMMENTARY: If a man holds a woman and another man rapes her, then the prescribed punishment will not be imposed on the man who grabs her. In the same way, one who clutches a person being killed is not awarded the punishment of qisas but he will be awarded a discretionary punishment and put in prison for a length of time decided by the judge or ruler. This is as some exponents say. But, to hold a man so that he may be killed is in fact abetting and helping in the crime and, in the light of another hadith, the punishment for helping a killer is also qisas (retaliation). So, we might say that this hadith (# 3485) is abrogated.

Shamni (Rh) has written in Multaqa: If anyone throws a man before a lion or another wild beast, who kills him then neither qisas, nor diyah will be binding on the person who throws him, but he will be imprisoned till he repents and will be beaten till his body aches.

AD-DIYAAT (BLOOD WIT)

MEANING & KINDS OF DIYAH: The word diyaat is the plural form of diyah. It means ‘monetary compensation.’ Hence, diyah is the money that is paid in compensation for ending someone’s life or for wounding him physically, cutting off his limb (s). The caption has the plural form diyaat to cover the many kinds of diyah.

There is a diyah to compensate for killing someone, or diyah nafs.

There is another diyah to compensate for wounding someone’s limbs, or diyah a’da.

They are further classified as:

(1) diyah mughallazah, and

(2) diyah mukhaffafah.

(1) DIYAH MUGHALLAZAH: It is as described here. They are one hundred she-camels as in this chart:

(i) Bint Makhad (she-camel) of one year, begins her second year) - 25.

(ii) Bint Labun (she-camel two years old in her third year) - 25.

(iii) Hiqqah (she-camel three years old in her fourth year) - 25.

(iv) Jadha'ah (she-camel four years old in her fifth year) - 25.

This is as Imam-Abu Hanifah (Rh) and Imam Abu Yusuf (Rh) say.

However, Imam Shafi'I (Rh) and Imam Muhammad (Rh) describe the diyah mughallazah in this way:

(i) Hiqqah - 30 (she-camels in 4th year)

(ii) Jadha'ah - 30 (she-camels in 5th year)

(iii) Muthannah - 40 (she camels who have completed 5 years and are in their 6th year).

They must all be pregnant.

Diyah mughallazah is wajib (obligatory) on the person who has perpetrated qatl shibh 'and or quasi deliberate intent or murder that resemble intentional murder.

(2) DIYAH MUKHAFFAFAH: is that if it is paid in gold then it is one thousand dinars. It is paid in silver, then ten thousand dinars are paid. If camels are paid for it, then five kinds of camels are paid to a total of one hundred, as in this chart:

(i) Ibn Makhad (He-camel in second year) - 20

(ii) Bint Makhad (she-camel in 2nd year) - 20

(iii) Bint Labun (she camel in 3rd year) - 20

(iv) Hiqqah (she camel in 4th year) - 20

(v) Jadhā'ah (she camel in 5th year) - 20

Diyah mukhaffafah is wajib (obligatory) on a person who commits qatl khata or accidental murder, or qatl jari mujri khata (accidental murder unknowingly) or qatl bisabab (indirect murder).

THEFT

PUNISHMENT FOR THEFT

Section (379): Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

Section (379): Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

In this regard the Holy Quran says "As to the thief male or female cut of his or her hands; A punishment by way of example from Allah, for their crime and Allah is exalted in power." [Sura Maida, (5:38)]

To steal is a great vice. Islam always subdues the wicked and fosters the gentle. The eternal rule of Islam is the legal earnings and speaking the truth, without which spiritual, moral and social development is impossible. So, Islam has prescribed cutting of hands for theft.

Monthly 'Adarsha Naree', August 2002 reports that a Bill was raised by the Pan Pacific Islamic Party in the Parliament of Malaysia to make rules for theft & Rape in the Terengganu state, a province of Malaysia. They agreed to introduce Islamic Law and the Bill was passed on 9th July 02, That Punishment for theft is to cut the Hand of the thief and punishment for Rape is to sentence to death of the person who commits sexual crime. The Chief Minister declared in the Parliament that this Law can bring peace in the Earth.

"Only the Laws of the Holy Quran can bring peace in the Universe."

During the time of Yaqub (AS) there was no provision in the Shari'ah to cut off the hand of a thief. But there was a provision to be a slave to the owner.

IMAM SHAFI'I UPHELD

3590. Sayyiduna Ayshah (R) narrated That the Prophet (Sm) said, "Do not cut off the hand of a thief unless (it is) for (the worth of) one-fourth of dinar and more."

COMMENTARY: Imam Shafi'I (Rh) cites this hadith to support his contention.

Mulla Ali Qari (Rh) has examined this hadith in great detail in his book and has established that the point of view of the Hanafis is sound.

INTERSESSION REGARDING HUDUD (OR, PRESCRIBED PUNISHMENTS)

AMPUTATING THE THIEF

Teebi (Rh) said that the caption should be the word (Ahl) being understood. As it stands, it means 'amputation for theft' but when the word (Ahl) (people) is inserted, the caption would read 'Amputating the thief,' or 'Serving the hand of the thief.'

THE WORD SARIQAH : This words means theft. In Shariah, it is the taking away by a sane, adult Muslim of some or all of a preserved property in a secret manner without permission in which he has no ownership or claim to ownership. He takes it away from such a place to which no one else has access, and which is protected, guarded or not guarded. (Muhriz) See Hidayeh, VI p 416 folly for Hirz.

CLAIM TO OWNERSHIP: It means that the ownership is not certain and there is some doubt about it.

PUNISHMENT AND MINIMUM AMOUNT OF THEFT: The jurists differ on what is the minimum amount of theft on which a thief's hand should be severed. Imam Abu Hanifah (Rh) says that it is a minimum of ten dirhams. There is no amputation on stealing anything of a lesser value.

Imam Shafi'I (Rh) says that the minimum on which a hand should severed is one-fourth dinar of gold or three dirhams of silver or any other thing of equivalent value. He cites the ahadith that mention that a hand was cut off on stealing one-fourth dinar. That was equal to three dirhams at that time and one dinar was worth twelve dirhams.

Imam Abu Hanifah (Rh) cites the Prophet (Sm) saying:

“Hand is not cut off except for a value of one dinar or ten dirham.”

According to Hidayah, it is better to act on the higher value than on the lower because it is the question of severing a human limb and in the lesser value there is likelihood of lack of jinayah (offences).

WHY THE DISAGREEMENT: The jurists differ on this issue because in the time of the Prophet (Sm) a hand was amputated for stealing a shield. Hence, Imam Shafi’I (Rh) says that the price of a shield at that time was three dirhams while the Hanafis put it at ten dirhams and this is as reported by Ibn Abu Shaybah (Rh) from Abdullah ibn Amr (R) ibn al-Aas (Rh). The same value of ten dirhams is mentioned in Kafi of the value of the shield stolen in the time of the Prophet (Sm).

DIFFERING VALUATIONS OF THE SHIELD

3591. Sayyiduna Ibn Umar (R) narrated that the Prophet (Sm) had a thief’s (right) hand cut off for (stealing) a shield worth three dirhams.

COMMENTARY: Shamni (Rh) said that this hadith contradicts the hadith transmitted by Ibn Abu Shaybah from Abdullah ibn Amr ibn Aas (R) who has given the value of the shield as ten dirhams. The same thing is reported from Ibn Abbas (R) and Amr ibn Shu’ayb. Also, Ibn Hummam (Rh) reported the same thing from Ibn Umar (R) and Ibn Abbas (R). This is what Ayni (Rh) has written in the marginal notes of Hidayah. It is on this that the Hanafi contention is based that the punishment of cutting off the hand of a thief may be enforced on him who has stolen what is worth at least ten dirhams. No punishment will be awarded to one who has stolen property worth less than that. As for the hadith of Ibn Umar (R) in which he has said

that the shield was worth three dirhams Shaykh Abdul Haq (Rh) and Mulla Ali Qari (Rh) have spoken at length in their commentaries on this subject. Scholars may study their books.

ANOTHER HADITH WITH OTHER MESSAGE

3592. Sayyiduna Abu Hurayrah (R) narrated that the Prophet (Sm) said, “May Allah’s curse be on the thief who steals an egg and his hand is cut off and who steals a rope and his hand is cut off.”

COMMENTARY: Imam Nawawi (Rh) said that it is clear from this hadith that it is permitted to call a curse on the sinners in general without specifying any. This is as in Allah’s words

{Behold! The curse of Allah Shall be upon the evil-doers} (11:18)

However, it is not allowed to name a person and curse him.

This hadith is evidence that cutting off the hand in punishment for stealing less than one fourth dinar or three dirhams is allowed. However, none of the four imams contends that punishment of cutting off hands is enforced when the worth of the stolen property is less than one-fourth dinar or three dirhams. They explain the hadith that the word (in the hadith) translated egg could mean a “‘a helmet’ worn by the warriors on their head, and the word rope could be the sailor’s rope fastened on boats and which is very costly.

Some scholars maintain that in early Islam, the punishment of amputating a hand was awarded for stealing eggs and ropes, but it was revoked later.

Some other scholars say that the thief of these little things becomes hardened gradually. He begins to steal castlier things and turns liable to receive the punishment of cutting off hands.

STEALING FRUIT, ETC & CUTTING OFF HAND

3593. Sayyiduna Rafi' ibn Khadij (R) narrated that the Prophet (Sm) said, "The punishment of cutting off hand is not awarded for stealing fruit and the spadix of a palm tree.

COMMENTARY: Imam Abu Hanifah (Rh) says that hand is not cut off for stealing fresh fruit, whether it is protected or not, in custody or not. The same applies to dried fruit on the trees and the cultivation and harvest that has not been reaped. Those things that are perishable and have a short life like meat, milk, etc. are subjected to analogy on the same basis.

However, others apart from Imam Abu Hanifah (Rh) have ruled that punishment is wajib (obligatory) on stealing any of these things, and hand of the thief will be cut off. Imam Maalik (Rh) and Imam Shafi'I (Rh) are among them.

Imam Abu Hanifah (Rh) also said that hand will not be cut off on stealing very ordinary things and very insignificant and which are permitted to everyone in an Islamic state. Examples are hay, grass, wood, reed, fish, bird, sulphurate of arsenic, lime, etc.

3594. Sayyiduna Amr ibn Shuayb (R) narrated from his father from his grandfather Abdullah ibn Amr ibn Aas (R) that Allah's Messenger (Sm) was asked about fruit that is hung (on trees). He said, "If anyone steals some of them after they are plucked and stored in a place to dry and the value as much as a shield is worth, then his hand will be cut off.

COMMENTARY: The hands are not amputated on stealing the fruit from the trees because they are not protected or in custody. But, once they are taken down and put together in place to dry, stealing them will make the thief liable to have his hand cut off because in this case they are protected. Except for Imam Abu Hanifah (Rh) the majority of the ulama (Scholars)

go by this hadith, because he says that until the fruit dries, hands will not be cut off on stealing it, whether it is protected or not.

As for this hadith, the Hanafis says that 'storing them to dry' refers to stealing after fruit has dried. This was a custom observed by the Arabs. The Hanafis also agree that the punishment of cutting off hand is awarded to one who steals fruit collected after having been dried, but punishment of cutting off hand is not awarded if fruit has not dried whether it is on the tree or plucked and collected together at one place. It is as about fresh fruit in the previous hadith.

This hadith not only contradicts the previous hadith but also runs different from, the Prophet's (Sm) words

(There is no cutting off hands for stealing food).

It is necessary in awarding the hadd (prescribed punishment) to be careful as far as possible and to be lenient in all respects. Every avenue should be explored to see that the hadd (prescribed punishment) is enforced as little as possible. Hence, in the event of contradiction in ahadith that hadith will be abided by whose meaning in respect of stealing of fruit is absolute. In this case, two scholars may refer to mirqat of Mulla Ali Qari (Rh) for an exhaustive treatment of this subject.

UNOWNED MOUNTAINOUS ANIMALS

3595. Sayyiduna Abdullah ibn Abdur Rahman ibn Abu Husayn Makki (R) narrated that Allah's Messenger (Sm) said, "A hand must not be cut off for (taking) fruit hanging on the tree and for animals grazing on the mountain. But, once they are taken away from their fold, or the fruit from where it is dried, a hand is cut off for what is worth the value of a shield."

COMMENTARY: Teebi (Rh) explained the word of the hadith (hurisah) to imply an animal that grazes on a mountain without anyone protecting it meaning that it is not anyone's property. If anyone takes such an animals, he will not be accused of stealing. But, if anyone takes away an animal from its enclosure then it is stealing because the animal belongs to someone else. Its price is the equivalent of the value of a shield, or more. So a hand will be cut off.

THE PLUNDERER IS NOT ONE OF US

3596. Sayyiduna Jabir (R) narrated that Allah's Messenger (Sm) said, "The bandit is not subject to amputation of hand. But one who plunders does not belong to us." (He does not follow our ways.)

COMMENTARY: A bandit robs people brazenly while a thief steals stealthily. Though the crime of the bandit is worse, his hand is not cut off because this punishment is given to a thief whose crime is clandestine.

SWINDLER'S HAND IS NOT CUT OFF

3597. Sayyiduna Jabir (R) narrated that the Prophet (Sm) said, "Hand is not amputated of one who is treacherous, one who plunders or one who pilfers."

3598. Sayyiduna Safwan ibn Umayyah (R) came to Madinah and went to sleep in the mosque. He put his cloak under his head for a pillow. A thief came and stealthily pulled out his cloak, but Safwan (R) nabbed him and took him to Allah's Messenger (Sm). He ordered that his hand should be cut off. But, Safwan (R) pleaded, "I have not intended this thing." (I request that he should be forgiven). "It is a sadaqah (charity)

(charity) to him.” So, Allah’s Messenger (Sm) asked, “Why not before you brought him to me?”

3599. Sayyiduna Abdullah ibn Safwan (Rh) reported the like of it from his father.

3600. Sayyiduna Ibn Abbas (R) also narrated it.

COMMENTARY: A treacherous person misappropriates a trust placed with him, either all of it or part of it. He commits a grave sin but is not liable to be punished with amputation of hand. What he embezzles is not a fully protected property or muhriz. It is discussed in detail in the Hidayah.

The same applies to a bandit and a swindler and a pilferer. They do not steal in secret. As for Safwan’s (R) cloak, the Hidayah (VI p417) says that the most correct thing is that keeping the cloak under the head is hirz (protective custody). The Prophet’s (Sm) words imply, “Why did you not forgive him earlier and surrender your right?” He had given the order to have his hand cut off after the man’s guilt was established. So, that became wajib (obligatory), and the complainant had no right to say or do anything in that matter. It was Allah’s right after that.

This makes it clear that once a thief is before a ruler and his guilt is established, then the punishment cannot be averted from him, not even if the complainant forgives him. But, it may be done before presenting the case to the ruler.

Ibn Hammam (Rh) however, says that if after judgement is passed for a thief’s hand to be cut off, the owner of the things stolen makes a gift of those things to him, or sells them to him, then his hand will not be cut off. But, Imam Zufar (Rh) Imam Shafi’I (Rh) and Imam Ahmad (Rh) maintain that his hand will be cut off. And, one verdict of Imam Abu Yusuf (Rh) is like theirs. The hadith of Safwan (R) also uphold this verdict.

However, this hadith is not in this very form in Haakim and some other sources. Rather, there is some additional material in that which causes a confusion and that makes the hadith weak.

THIEF'S HAND NOT CUT OFF DURING EXPEDITION FOR JIHAD

3601. Sayyiduna Busr ibn Artah (R) narrated that Allah's Messenger (Sm) said. "The hand is not cut off during a battle."

According to another version: 'during a journey' instead of 'a battle'

COMMENTARY: Ibn Maalik (Rh) explains this hadith thus: When the Muslim army fights the enemy in enemy land and the ruler himself is not among them but the command of the army heads them and someone steals something then his hand should not be cut off. Also, other prescribed punishments must not be enforced.

Some jurists go by this ruling. The reason is that the man who is guilty may take up residence in enemy territory (to avoid the punishment) and thus go astray. It may also happen that the warriors lose heart and become disunited. According to Teebi (Rh) this is the contention of Imam Abu Hanifah (Rh).

Some authorities say that if one of the warriors steals from the spoils, his hand must not be cut off because he also owns a share in it.

Teebi (Rh) said about the second version (of Abu Dawud and Nasa'i), that journey means 'journey to battle'.

STEALING MORE THAN ONCE

3602. Sayyiduna Abu Salamah (R) narrated on the authority of (Sayyiduna) Abu Hurayrah (R) that Allah's Messenger (Sm) said about a thief, "If he steals cut off his (right) hand. If he steals again, cut off his (left) foot. And if he steals again, cut off his (right) foot."

COMMENTARY: The ulama (Scholars) are unanimous about the first two punishments, but they differ about the third and the fourth. Imam Shafi'I goes by this hadith, but Imam Abu Hanifa (Rh) hold that if he steals the third time, his hand will not be cut off but he will be imprisoned till he dies, or makes a repentance to Allah. Imam Abu Hanifa (Rh) said that this was the practice of the sahabah (Prophet's Companions) (R) unanimously and, moreover, if all his hands and feet were severed, his survival would be difficult and this would amount to an in justice with him. As for this hadith, it is an expression of warning to forestall further crime by the thief and, secondly, the scholars question the soundness of this hadith. Indeed, Tahawi (Rh) went so far as to say that he had examined very many of the sahabah (Prophet's Companions) (R) aathar and judgements, but, in spite of deep examination and search, he could not find a correct source of this hadith. He met many scholars of hadith who had memorized ahadith but all of them denied (knowledge) of this hadith.

Ibn Hammam (Rh) said that many ulama (Scholars) say, about severing the foot, that the leg is severed from near the knee.

3603. Sayyiduna Jabir (R) narrated that a thief was brought to the Prophet (Sm). He said, "Cut off (his right hand)". SO, his hand was severed. He was brought a second time, and he commanded, " Cut off his left foot)." So, his foot was severed. Then, he was brought a third time and he commanded, "Cut

off (his left hand).” That was cut. Again, he was brought a fourth time and he commanded, “Cut off (his right foot).” That was cut. He was brought again a fifth time and he commanded, “Kill him”. They took him away, killed him and dragging him down, they cast him into a well. Then they threw stones over him.

3604. Baghawi has added in Sharh us-sunnah (Prophets (Sm) practice) that the Prophet (Sm) said about maiming the thief, “Cut off (his hand) and cauterize it.”

COMMENTARY: He instructed that the severed hand should be cauterized to stop bleeding, otherwise he would have bled to death.

Khattabi (Rh) said that this hadith is abrogated by the Prophet’s (Sm) words:

(Blood of a Muslim is not lawful except for one of three reasons.)

Some authorities say that the Prophet (Sm) command to kill the thief was based on some administrative reasons. The ruler has a right to use his wisdom in enforcing punishment to maintain law and order.

Some authorities say that the Prophet (Sm) may have known that the man was an apostate. So he had him killed.

Some other authorities say that the man might have regarded stealing as lawful. Hence, he stole again and again.

We must choose one of these explanations, because if he were a Muslim, then it was not at all lawful to drag his corpse and drop it into the well.

SUSPENDING SEVERED HAND IN NECK OF THIEF

3605. Sayyiduna Fudalah ibn Ubayd (R) narrated that a thief was brought to Allah's Messenger (Sm) So (at his command), his hand was cut off. Then he commanded about it, and it was suspended on his neck. (The other people may take a lesson from it.)

COMMENTARY: Imam Shafi'I (Rh) and Imam Ahmad (Rh) hold that it is sunnah (Prophet's (Sm) practice) to hang a thief's hand on his neck after cutting it off. Imam Abu Hanifah (Rh) said that it is at the discretion of the ruler. He may have it hung on his neck, but it is not a sunnah (Prophet's (Sm) practice) because it is not proved that the Prophet (Sm) had it done.

SELL THE SLAVE WHO STEALS

3606. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "If a slave steals, sell him, even if it is for a nashsh."

(A nashsh is half an ooqiyah or twenty dirhams).

COMMENTARY: A slave who steals must be disposed of even for a paltry sum of money because he becomes defective after stealing. It is not proper to keep an imperfect slave. Imam Malik (Rh) Imam Shafi'I (Rh) and most (earned men say that if a slave steals then his hand must be cut off whether he is a fugitive or not.

Imam Abu Hanifah (Rh) said that if a husband or a wife steals one another's property, or a slave steals the property of his master, or of his owner's wife, or husband, then no hand is cut off. The reason is that the spouses generally have access and permission to use one another's property and the slave, too has this kind of privilege over his owner's and over his owner's family's property, with their tacit permission. In this

case the condition of hirz is not met in the full sense and which is necessary for cutting off a hand.

RULER CANNOT FORGIVE THE GUILTY

3607. Sayyidah Ayshah (R) narrated that a thief was brought to Allah's Messenger (Sm). He had his hand cut off. (When he gave the command to do that) the sahabah (Prophet's Companions) (R) said, "We had not presumed that you would go as far as (to give) this (command rather, we had thought that you would forgive him)." He said, "If it had been Fatimah (bint Muhammad), I would have had her hand cut off."

COMMENTARY: That thief was perhaps a relative or an acquaintance. The Prophet (Sm) made it very clear that the prescribed punishment was Allah's right which cannot be violated. He said that it was wajib (obligatory) on him to enforce it. He made it clear that he had no say in it.

SLAVE'S HAND IS NOT CUT OFF

3608. Sayyiduna Ibn Umar (R) narrated that a man brought his slave to Umar (R) and said, "Have his hand cut off, because he stole a mirror belonging to my wife." Umar (R) said, "He is not liable to have his hand cut off, for he is your servant who took from your belongings."

COMMENTARY: Sayyiduna Umar (R) made it to that man, "As your servant, he resides with you and is charged with looking after your property. It is with your consent that he has power over your belongings and so no hirz applies in his case. Since that is so the Punishment of cutting off his hand does not arise."

This, indeed is the contention of Imam Abu Hanifah (Rh) and Imam Ahmad (Rh) Others, however, hold a different opinion.

ONE WHO STEALS SHROUD

3609. Sayyiduna Abu Dharr (R) said: Allah's Messenger (Sm) said to me, "O Abu Dharr". I said, "Here am I, O Messenger of Allah, at your service!" He asked, "What will you do when death (meaning a pestilence) comes over the people and a house, meaning a grave, will cost as much as a slave?" (The severe pestilence will result in many deaths causing a shortage of places of graves.) I submitted, "Allah and His Messenger knows best." He said, "You must show patience." Hammad ibn Abu Sulayman said, "The hand of one who steals shroud should be cut off because he enters the house of the dead person (to rummage it)."

COMMENTARY: Hammad ibn Abu Sulayman (Rh) deduced from the Prophet (Sm) Words calling the grave a house that since a house is hirz (a protected place) anyone who steals from it will have his hand cut off. So, if he steals from a grave he will have his hand cut off. However, this deduction of hammad is not strong because it is not necessary that the place would attract the command of hirz though it is a house. For instance, if a man steals from a house whose gate is open or there is no guard over it, then, all the ulama (Scholars) agree that the hands of a thief would not be cut though he steals from the house. This house was not safe, so not a hirz. In the same way, though a grave may be described as a home, yet it is not hirz or protected. So, one who steals a shroud from a grave is not liable to have his hand cut off.

Ibn Hummam (Rh) said that the contention of Imam Abu Hanifah (Rh) and IMAM Ahmad (Rh) is that one who steals a shroud will not be punished by having his hand cut off. However, the other two Imams and Imam Abu Yusuf (Rh) (of the Hanafis) opine that his hand will be cut off. For more information on this, see Mirqat.

OF ROBBERY AND DACOITY PUNISHMENT

Section 395: Who ever commits dacoity shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years and shall be liable to fine.

Section 395: Who ever commits dacoity shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years and shall be liable to fine.

Section 392: Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine and if it be committed on the high way between sunset and sunrise the imprisonment may be extended to fourteen years.

Section 397: If at the time of committing robbery or dacoity, the offender uses any deadly weapons or causes grievous hurt to any person or attempts or causes death or grievous hurt to any person the offender shall be punished with imprisonment for not less than seven years.

"The Punishment of those who wage war against Allah and His Apostle and strive with might and meant for mischief on the earth is execution or crucifixion or the cutting off hands & feet from opposite sides or exile from the land. That is their disgrace in this world and heavy punishment is for them in the hereafter." **(Sura Maida-5:33).**

"Only the Laws of the Holy Quran can bring peace in the Universe."

EXTORTION

(PUNISHMENT)

Section 381: Who ever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

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Islam is the religion of peace, goodwill, mutual understanding and good faith. The Holy Quran regards tumult as a great sin. Thus the Quran says, "Tumult and oppression are worse than slaughter."

The Holy Quran teaches mankind, "Neither to oppress any body nor to tolerate or endure oppression."

Behold the curse of Allah, is on those who do wrong. **(Sura Hud 11:18)**

Deal not unjustly and ye shall not be dealt with unjustly **(Sura Baqarah 2:279).**

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RAPE/ADULTERY **(PUNISHMENT)**

Section 376: Whoever commits rape shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

Section 376: Whoever commits rape shall be punished with imprisonment for life or with Imprisonment of either description for a term which may extend to ten years and also be liable to fine, unless the woman raped is his own wife and Is not under twelve years of age in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

Section 377: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Adultery or fornication is a hateful sin. So, the Quran forbids adultery or fornication. The Quran warns, 'And do not approach unlawful sexual intercourse (i.e all situations that might possibly lead to it). Indeed, it is ever an immorality and is evil as a way..' (**Sura Bani Israil - 17:32**).

Again the Holy Quran says, "The [unmarried] woman or [unmarried] man found guilty of sexual intercourse (Either by voluntary confession by the offender or the testimony of four male witnesses to having actually seen the act take place.

Otherwise, there can be no conviction. - lash each one of them with a hundred lashes (The ruling in this verse is applicable to unmarried fornicators. Execution by stoning is confirmed in the sunnah for convicted adulterers), and do not be taken by pity for them in the religion of Allah (i.e., Do not let sympathy for a guilty person move you to alter anything ordained by Allah, for His law is protection for society as a whole), if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment." (Sura Noor - 24:2).

The Quran has sanctioned exemplary punishment for adultery or fornication, so that mankind remain aloof or restrain from it. Therefore, not only should it be avoided as a vice but any approach or temptation to it should be avoided.

The Holy Quran also mentions the provision of punishment for slandering a woman.

And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient, [24:4].

Not only that, it is very unjust to harass girls, call for illicit sex, slap them, clap their hands. In this regard, verse 35 of Surah Anfal is revealed in the Holy Quran. When visiting women came to the holy Kaaba, the wicked would clap their hands and whispering. And then Allah sent down this verse to punish them for this heinous act. It is very sad that many women in our country, whether they are adults or minors, are harassed. Many times, they commit suicide, alas! There must be punishment for this harassment. The Holy Qur'an says, "And their prayer at the House was not except whistling and handclapping. So taste the punishment for what you disbelieved." Surah Anfal, verse 35.

Monthly 'Adarsha Naree', August 2002 reports that a Bill was raised by the Pan Pacific Islamic Party in 'he Parliament of Malaysia to make rules for theft & Rape in the Terenganu state, a province of Malaysia. They agreed to introduce Islamic Law and the Bill was passed on 9th July 02, That Punishment for theft is to cut the Hand of the thief and punishment for Rape is to sentence to death of the person who commits sexual crime The Chief Minister declared in the Parliament that only this Law can bring peace in the Earth

"Only the Laws of the Holy Quran can bring peace in the Universe.

3561. Sayyiduna Ibn Abbas. (R) narrated that when (Sayyiduna) Ma'iz ibn Maalik (R) came to the Prophet (Sm) (and submitted, "I have committed adultery,") he asked, "Perhaps, you merely kissed (her), or touched (her) with sexual intent, or looked (at her)?" But, he submitted, "No, O Messenger of Alalh!" So, he asked, "Did you have sexual intercourse with her?" He asked this question directly not by allusion. He confirmed, "Yes!" At that, he commended that he (Ma'iz) should be stoned to death. **(Mishkatul Masaabih)**

3571. Sayyiduna Wa'il ibn Hujr (R) narrated that, in the time of Prophet (Sm), a woman was compelled (to submit to a man's evil desire against her will. He solved her of punishment, but imposed the hadd (prescribed punishment) on the man who had raped her. The narrator did not say any thing about whether the Prophet (Sm) made a dower payable to the woman (by the man).

COMMENTARY: If the narrator did not mention it, it does not fellow that a dower was not paid. Other ahadith do confirm that it is wajib (obligator}) to pay the mahr (dower) to women who are forced to submit to a man's evil desire against her will. The word mahr is actually used uqr which is a penalty payable

to a woman who is subjected to illicit sexual intercourse. The amount is calculated according to what dower would have been wajib (obligatory) in a lawful relationship of marriage.

It is stated in fatawa Alamgiri that uqr is mahr mithl (proper dower). In other words, the rapist must be made to pay to the woman the amount equal to the dower proper to her status.

(Mishkatul Masaabih).

DEFAMATION

Section 500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both.

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Here the Holy Quran has taken most serious notice of the people who put forward slanderous or scandalous suggestion or about a woman without sufficient evidence.

As the Quran pronounces "And those who launch and charge against chaste women and produce not four witnesses (To support their allegations) flog them with eighty stripes and reject their evidence for such men are wicked, transgressors." **(Sura Nur 24:4).**

So, the Holy Quran commands men to keep their character clean.

Those who love (to see) scandal published broad cast, among the believers will have a grievous penalty in this life and in the life hereafter; Allah knows and ye don't know." **(Sura Nur, 24:19).**

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INTOXICATION

Misconduct in public by drunken person.

Section 510: Whoever in state of intoxication appears in any public place or in any place which it is a trespass for him to enter and there conducts himself in such a person shall be punished with simple imprisonment for a term which may extend to twenty four hours or with fine which may extend to ten taka or with both.

Section 510: Whoever in state of intoxication appears in any public place or in any place which it is a trespass for him to enter and there conducts himself in such a person shall be punished with simple imprisonment for a term which may extend to twenty four hours or with fine which may extend to ten taka or with both.

The Holy Quran has showed the way as to what kind of food or thing is legal or illegal for men. And it has described as to what sorts of food is beneficial to health and what is harmful to health.

The task concerning wine and gambling; say, in them is a great sin and some profit for men, but the sin is greater than profit **[Sura Baqara 2:219)].**

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid *(The prohibition understood from the word "avoid" is stronger than if Allah had merely said, "Abstain." The former requires distancing oneself from anything remotely related to these practices)* it that you may be successful. **(5:90)**

Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?

(5:91)

From our forgoing discussion we can say that man made laws have failed to reduce offence and crimes, mutual fighting, malice, bloodshed, disruption and quarrel.

The Holy Quran teaches mankind that Islam believes peace not in disorder or disturbance, in friendship, not in quarrel, in solidarity, not in disintegration, in integrity not in duplicity, in unity not in disunity, in tranquillity not in restlessness in equality not in discrimination, in liberalism not in communalism and in universal brotherhood, not in hostility.

The Holy Quran says, "(They are) Those who establish them in the land establish regular prayer and give regular charity enjoying the right and forbid wrong, with Allah rests the end (And decision) of (all) affairs." (Sura Hajj 22:41).

According to the Holy Quran the human being is divided into two groups, on one side is the disbeliever, dishonest, and the bad. The man who has been able to buildup himself by dint of self-perseverance, honesty, simplicity and good character is the only desired and rewarded man of Islam.

"Only the Laws of the Holy Quran can bring peace in the Universe."

3635. Sayyiduna Ibn Umar (R) said that (Sayyiduna) Umar (R) delivered a sermon from the pulpit of Allah's Messenger (Sm) and he said, "Prohibition of wine has been revealed. And it is produced from five things: grapes, dates, wheat, barley and honey. Wine is what covers and confounds the mind."

COMMENTARY: The ulama (Scholars) explain that the concluding words describe wine as what confounds the mind. Hence, these five things are not all from which wine is prepared. There are other things too (Prohibition was with verse 90 of sunah al-Ma'idah). **(Mishkatul Masaabih).**

BLASPHEME

If any body criticizes the Quran or Hadith, the prophet and his companions or wounds the sentiments of religious beliefs intentionally shall be punished with imprisonment for a term which may extend to two years.

If any body criticizes the Quran or Hadith, the prophet and his companions or wounds the sentiments of religious beliefs intentionally shall be punished with imprisonment for a term which may extend to two years.

Human right, which is a part of Islam wants man to establish humanity. So, Islam is the religion of humanism.

Let me conclude quoting from the Holy Quran, "Then is it the judgement of [the time of] ignorance they desire? But who is better than Allah in judgement for a people who are certain [in faith]." (Al-Quran, 5:50). Ameen.

"Only the Laws of the Holy Quran can bring peace in the Universe."

3553. Sayyiduna Sharik ibn Shihab > narrated that he cherished a desire to meet one of the sahabah (Prophet's Companions) (R) of the Prophet (Sm) and to ask him about the Khawarij. (He wanted to know whether the Prophet (Sm) had foretold the ones that had begun to appear.) He met Abu Barzah (R) on the day of eed among some of his companions, and asked him, "Had you heard Allah's Messenger (Sm) mention the Khawarij?" He said, Yes! I did hear Allah's Messenger (Sm) with my ears and saw him with my eyes. Some property was brought to Allah's Messenger (Sm). He divided it. He gave to those on his right and to those on his left, but he gave nothing to

those who were behind him. A man (among those) behind him got up and complained, 'O Muhammad, you have not been fair in dividing.'" He was a black man with all his hair shaved off and he was wearing a pair of white garments. This made Allah's Messenger (Sm) very angry. He said, 'who will you find after me more just than I am?' Then, he added, 'toward the end of time, a people will emerge and this one seems to be one of them. They will recite the Quran but it will not go past their throats. They will (rebel against the ruler and) turn away from Islam (as rapidly) as an arrow shoots past the game at which it is shot. Their peculiar sign will be at tahleeq (their shaved heads). They will not cease to appear (in every age) till the last of them emerges with al-masih ad-dajjah. (He will come out against Easa (AS) when he descends on earth before the Last day). When you meet them, (kill them, for) they and the worst of man and animals.'" **(Mishkatul Masaabih)**

CONDUCTING THE OFFICE OF THE QADI (JUDGE) & FEAR OF IT

In this chapter, we shall deal with the office of the judge. We shall mention:

(i) The judge must rely merely on the Islamic code of law which is derived from the book and the sunnah (Prophet's PBUH practice), and his ijhtihad as his guide. His decision should not contravene these sources of Islamic law.

(ii) This office is so very high and significant that not everyone should try to attain it. Rather, as far as possible, one must try to avoid taking this responsibility and must be fearful of holding it. **(Mishkatul Masaabih).**

Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing. **(4:58)**

Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded. **(16:90)**

... So do not fear the people but fear Me, and do not exchange My verses for a small price. And whoever does not judge by what Allah has revealed - then it is those who are the disbelievers. **(5:44)**

... And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers. **(5:45)**

And let the People of the Gospel judge by what Allah has revealed therein. And whoever does not judge by what Allah

has revealed - then it is those who are the defiantly disobedient.
(5:47)

JUDGEMENT NOT WHEN ANGRY:

3731. Sayyiduna Abu Bakrah (R) narrated that he heard Allah's Messenger (Sm) say, "A judge must not give judgement between two people when he is angry."

COMMENTARY: When a person is angry, he loses ability to ponder and decide. So, he cannot pass a fair judgement. Also, no judgement may be passed when it is very cold or very hot, when one is hungry or thirsty and when one is ill. Any judgement given in such condition will be implemented with dislike. (**Mishkatul Masaabih**)

JUDGE MAY RESORT TO IJTIHAD:

3732. Sayyiduna Abdullah ibn Arm (R) and Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "When a ruler (or judge) pass judgement and resorts to ijti had (pondering deeply over the case) and is correct (in making it), he will get two rewards (one for his ijti had and the other for the correct decision). And, when he pass judgement having resorted to ijti had but is wrong he will get one reward." (**Mishkatul Masaabih**).

JUDGES OF PARADISE AND OF HELL:

3735. Sayyiduna Buraydah (R) narrated that Allah's Messenger (Sm) said, "Judges are of three Kinds. One of these Kinds comprises those who will be admitted to paradise and two Kinds are made up of those who will be consigned to hell. As for the one who will enter paradise, he is the man who knows what is right and gives judgement on that basis. And the man

who knows (the truth and) what is right yet transgresses in his judgement will be sent to hell. And, so a man who gives judgement to the people though he is ignorant will be sent to hell." (**Mishkatul Masaabih**)

QIYAS AND IJTIHAD ARE ALLOWED

3737. Sayyiduna Mu'adh ibn Jabal (R) narrated that when Allah's Messenger (Sm) sent him to Yemen (as a judge and ruler), he asked him, "How will you judge when a case is brought to you?" He said, "I shall decide according to Allah's Book." He asked, "And if you do not find an answer in Allah's Book? He said, "Then I will follow the sunnah (Prophet's (Sm) practice) of Allah's Messenger (Sm)." He asked, "And if you find no answer in the sunnah (Prophefs (Sm) practice) of Allah's Messenger (Sm)." He said, "I shall use my opinion and make ijthihad and not lag behind in it." So, Allah's Messenger (Sm) patted him on his breast and said, "Praise belongs to Allah who has made the messenger of the Messenger of Allah consistent with what pleases him."

COMMENTARY: He said that he would deduce from the relevant rulings and similar cases and laws in the Quran and the Sunnah (Prophet's (Sm) practice).

Mazhar also explained the hadith in the same way. The imams, who are mujtahids have deduced many judgements on qiyas. However, they have differed on its application and recourse to it. For example. Imam Shafi'I compares interest on barter of wheat for wheat to interest on watermelon for watermelon because both are eatables. Imam Abu Hanifah (R) compares wheat for wheat to lime for lime, both being weighable commodities. Interest is forbidden in any case (when more of same commodity is exchanged for less of it).

In short, this hadith is a strong evidence that qiyas and ijthad are allowed and lawful. It rejects the zawahir (ghayr muqallidin) who reject qiyas and ijthad. **(Mishkatul Masaabih)**

AFTER PLAINTIFF DEFENDANT MUST BE HEARD TOO

3738. Sayyiduna Ali (R) narrated that Allah's Messenger (Sm) decided to send him to Yemen as a qadi, so he submitted, "O Messenger of Allah, you send me while I am young and do not possess (enough) knowledge of the office of qadi." He said, "Surely, Allah will guide your heart (to rectitude) and cause your tongue to be true (in making judgement)." (Then he gave him instructions, saying) "When two men bring to you their case, do not decide in favour of the first (the plaintiff) till you have heard the argument of the second (the defendant), for this will help you arrive at a correct decision."

He narrated (further), "After that I (followed) his instructions and did not have any doubt (or hesitation) in deciding (a case before me)."

"And we shall reproduce the hadith of Sayyidah Umm Salamah (R) (#3770) in the chapter about cases and testimonies (Chapter V). **(Mishkatul Masaabih)**

THE BOOK OF AHKAM (JUDGEMENTS)

CHAPTER 3. B. If somebody is assigned the authority of ruling some people, but he does not look after them in an honest manner!

2201. Narrated Ma'qil Bin Yasar I heard the Prophet saying, "Any man whom Allah has given the authority of ruling some people and he does not look after them in an honest manner, will never have even the smell of Paradise."

2202. Narrated (Ma'qil Bin Yasar) Allah's Messenger said, "If any ruler having the authority to rule Muslim subject dies while he is deceiving them, Allah will forbid Paradise for him." [9:265-O. Sahih-Al-Bukhari]

CHAPTER 5. Can a judge give a judgement or a formal legal opinion while he is in an angry mood?

2204. Narrated Abu Bakr who heard Allah's Messenger saying, "A judge should not make a judgement between two persons when he is in anger." [9:272-O. Sahih Al-Bukhari].

"Only the Laws of the Holy Quran can bring peace in the Universe."

THE BOOK OF AD-DIYAT

(Blood Money)

[Payment of Bloodshed]

CHAPTER 5. The Diya for (Cutting) fingers.

2174. Narrated Ibn 'Abbas The Prophet (Sm) said, "This and this are the same." He meant the little finger and the thumb. [1]- [9:33-0. Sahih Al-Bukhari]

DIYAH FOR CUTTING OFF FINGER

3486. Sayyiduna Ibn Abbas (R) narrated that the Prophet (Sm) said, "This and this (meaning the little finger and the thumb to which he pointed) are equal," (as for as diyah is concerned.

COMMENTARY: If anyone cuts off all the fingers or all the toes of a person, it will be wajib (obligatory) on him to pay the entire diyah (one hundred camels). It comes to one-tenth for each finger. There is no difference between thumb and little finger though it has three pores against two of the thumb. There also is no difference in diyah of the right and left hands. The diyah for each pore will be one-third of one-tenth, (for each finger) and the diyah for each pore of a thumb will be half of one-tenth.

DIYAH FOR CHILD IN WOMB

3487. Sayyiduna Aby Hurayrah (R) narrated that Allah's Messenger (Sm) passed judgment when the child of a woman of Banu lihyan wa miscarried (or was born dead) that it is wajib (obligatory) (on the tribe) to set free a ghurrah (which is a slave, male or female of the best kind). Then, the woman on whom he had made it binding (through her tribe) to emancipate a

ghurrah died. So, he decreed that her sons and husband should inherit from her but the diyah should be paid by her asabah (paternal relatives).

COMMENTARY: Two women quarrelled bitterly. One of them threw a stone at the other who was pregnant. The stone hit her on her belly and should had a miscarriage.

As a consequence, diyah was imposed on the striker's aaqilah (tribe or family). If the child was born alive and then died, or was born alive and she had struck the stone afterwards and it had hit the child, killing him, then the entire diyah would have been wajib (obligatory).

Ghurrah is the whiteness on a horse's forehead. This word is applied also to a slave male or female of white colour. In this hadith, it means simply a male or female slave. The jurists say that ghurrah is one-twentieth of a diyah, or five hundred dirhams.

The word asabah in the hadith refers to aaqilah. They did not qualify for an inheritance on account of that because if anyone is responsible to pay the diyah of a person it does not entitle him to his legacy. Only the legal heir will get that.

Only the woman's sons and husband are named as her heirs. It is perhaps only they were her surviving heirs, otherwise all living heirs are entitled to the inheritance as explicit in the next hadith.

DIYAH (BLOOD WIT) IS WAJIB (OBLIGATORY) IF KILLED BY STONING

3488. Sayyiduna Abu Hurayrah (R) narrated that two women of Hudhayl quarrelled one with the other. One of them threw a stone at the other killing her and what was in her womb. Allah's Messenger (Sm) judged that the blood-wit for the child

miscarried by her should be a ghurrah (male or female slave). He also judged that the woman who was bound to pay the bloodwit should pay it and that her sons and those with them would inherit her.

COMMENTARY: Perhaps the previous hadith (# 3487) and this one speak of two different events.

If anyone is killed on throwing a stone then diyah (bloodwit) becomes wajib (obligatory) not qisas (retaliation). This killing was of the kind shibh amd (one that resembles intentional murder). This is what Imam Abu Hanifah (Rh) said. He believes that the stone was a small stone. The other imams disagree with him.

3489. Sayyiduna Mughirah ibn Shubah (R) narrated that two women were co-wives (of the same man). One of them threw a stone or a tent-pole on the other (who was pregnant). She suffered a miscarriage. So, Allah's Messenger (Sm) judged that diyah be paid for the miscarried child: a ghurrah (which is a female or a male slave), making it wajib (obligatory) on the' asabah (relatives on the father's side) of the woman (who had struck the stone or tent pole).

According to another version: He (Mughirah (R)) narrated that a woman struck her fellow-wife who was pregnant with a tent-pole causing her death (and her unborn child too). He said that one of the two women belonged to the Libyan (a branch of the tribe Hudhayl). He (Mughirah(R)) said that Allah's Messenger (Sm) made the diyah for the slain woman wajib (obligatory) on the paternal relatives of the woman who had killed and made the diyah of the child who was in the womb of the woman (who was killed) a ghurrah (a male or female slave).

COMMENTARY: This hadith also supports the contention of Imam Abu Hanifah (Rh) The killing was not classified as intentional, but one resembling intentional.

Imam Shafi'I (Rh) said that the stone mentioned here was a small stone, and normally one does not decide to kill anyone with a tent pole.

THE DIYAH PAYABLE AGAINST QATL KHATA & SHIBH AMD

3490. Sayyiduna Abdullah ibn Amr (R) narrated that Allah's Messenger (Sm) said, "Know! The bloodwit for murder that resembles intentional, as is committed with a whip or a stick, is one hundred camels, of which forty must be pregnant."

3491. Sayyiduna Ibn Umar (R) (the same hadith.)

COMMENTARY: This hadith in the masabih has these words:

[Know! The accidental murder resembling the intentional that was perpetrated by a whip or a stick has a blood wit of one hundred camels - diyah mughallazah. Forty of the she-camels among them must be pregnant.]

In other words, the qatl 'amd khata' mentioned here means qatl khata' shibh 'ami as in the foregoing version.

Murder is perpetrated deliberately, or by accident resembling intentionally.

(i) Deliberate murder is by intention with a weapon or a sharp-edged tool severing a limb, or collapsing.

(ii) That which 'resembles the intentional' means to kill someone knowingly with something that is not sharp-edged and not a weapon, whether it is used generally to kill man or not.

(iii) The accidental murder is to kill someone without intention or aim. These three have found mention in the previous pages. This is to which the opinion of Imam Abu Hanifah (Rh) conforms. He says that the stick mentioned in the hadith is any kind of stick. It could be light-weight or heavy-weight.

Other imams say that it is a light-weight stick with which generally a person does not commit murder. This is because they hold that to kill anyone with a heavy object with which one can be killed is intentional killing.

In some versions, as in the foregoing one of Masabih, the word diyah is qualified by mughallazah. Therefore, the-diyah of shibh amd (resembling deliberate) killing is (mughallazah) severe: of four kinds of one hundred camels as wajib (obligatory). Their detail is mentioned in the introductory portion of this chapter and it is the opinion of Ibn Masud (R) Imam Abu Hanifah (Rh) Imam Abu Yusuf (Rh) and Imam Ahmad (Rh). But, Imam Shafi'I (Rh) and Imam Muhammad (Rh) hold that mughallazah is one hundred camels of three kinds as wajib (obligator}), details of which too have been mentioned in the introductory portion of this chapter.

However, it is agreed that diyah mughallazah is not wajib (obligatory) in qatl khata (accidental killing). Rather, the wajib (obligatory) is one hundred camels of five kinds:

- (i) Ibn Makhad - 20
- (ii) Bint Makhad - 20
- (iii) Bint Labun - 20
- (iv) Hiqqab - 20
- (v) Jadha'ah - 20

This hadith uphold the view of Imam Shafi'I (Rh) and Imam Muhammad (Rh) concerning diyah mughallazah.

The Hanafis point out that this hadith is contrary to the one reported by Ibn Masud (R) and Sa'ib (R) ibn Yazid.

3492. Sayyiduna Abu Bakr ibn Muhammad ibn Amr ibn Hazm (Rh) reported on the authority of his father (Muhammad ibn Amr (Rh)) that his grandfather (Amr ibn Hazm (R)) narrated that Allah's Messenger (Sm) wrote to the people of Yemen. His letter had these (instructions): [He who deliberately kills a Muslim for no reason at all (which is qatl amd) must bear retaliation for what his hands have wrought (and he will be killed for the doing of his hands) unless the heirs of the person killed are willing (to pardon him or to accept pecuniary compensation).]

The letter also said: [A man (who has killed her) may be killed in retaliation for a woman (he killed).]

And it had: [the bloodwit for life is one hundred camels (so he who has them may give them as per guidelines mentioned previously). And whoso has gold, may give one thousand dinars.

The bloodwit for the complete cutting off of a nose is nose hundred camels that must be paid.

A full bloodwit is payable for the teeth.

And so full bloodwit for the lips (when they are completely sundered). And a full bloodwit for both the testicles

And a full bloodwit for the penis. And a full bloodwit for the backbone.

And a full blood wit for the eyes. And a half bloodwit is payable for one foot.

And one-third of the bloodwit for wounding the scalp.

And one-third of the bloodwit for a stab wound that pierces the body.

And fifteen camels are paid for a wound in the head that displaces the bone.

And ten camels for each finger and each toe.

And five camels for a tooth.

A version in (Muwatta of) Maalik (Rh) the words are: [for an eye, (the bloodwit is) fifty (camels),

for a hand, fifty (camels),

for a foot, fifty (camels),

and, for a wound that lays bare (or dislodges) a bone, (the bloodwit is) five (camels).

COMMENTARY: If anyone commits deliberate murder and the heirs of the person who he kills do not kill him in retaliation and, if they are willing, bloodwit will be wajib (obligatory). As for the perpetrator of accidental murder or murder resembling deliberate murder, he is never punishable by retaliation, but only bloodwit is wajib (obligatory) on him. Diyah or bloodwit may be paid by camels, or in gold at one thousand dinars, or in silver at ten thousand dirhams. However, here silver is not mentioned, sufficing on conjecture, so it does not imply that payment of bloodwit in silver is not allowed. Rather, whatever the heirs of the murdered person and the killer decide between themselves should be the unit of bloodwit.

As for the jurists, they differ on the validity of dirhams and dinars. Imam Abu Hanifah (Rh) in and Imam Ahmad (Rh) rule that if the giver has camels but wishes to pay the diyah in monetary units, then it is allowed to receive that from him. Imam Shafi'I (Rh) however, rules that if he has camels then monetary compensation should not be made, unless both sides agree to it.

The hadith prescribes a full bloodwit for both eyes (when they are blinded). The basic rule concerning bloodwit for cutting off a limb is that a full bloodwit becomes wajib (obligatory) when the usefulness of the limb is lost completely or its look and beauty is impaired fully. The reason is that it is a kind of killing or making someone's life useless. More than that, Allah's Messenger (Sm) has commanded that a full bloodwit may be paid for these limbs. Further, from this base, other related rules are deduced. It is reported that Sayyiduna Umar (R) had made four bloodwits wajib (obligatory) on a man who had struck another man with a single blow that had deprived him of his brain-power, hearing, sight and speech, all four things.

Moreover, if a person shaves off a man's beard and it does not grow again then diyah or blood wit will be binding on him who has deprived him of his beard because he impaired the beauty of a human face. The same rule applies to the hair on one's head.

3493. Sayyiduna Amr ibn Shu'aub (R) narrated from his father from his grand father that Allah's Messenger (Sm) decided that (as blood wit) five camels should be paid for every such wound that bares a bone, and (also) five camels for every tooth.

COMMENTARY: The diyah of all teeth is one hundred camels but of one tooth is five, so this does not seem correct mathematically. The fact is that it is not necessary that our reasoning should encompass all the commands and directions given to us by the noble Prophet (Sm). Many commands there are that belie reasoning. It is enough for him to give a command and for us to obey it.

BLOOD WIT FOR DIGITS IS AT PAR

3494. Sayyiduna Ibn Abbas (R) narrated that Allah's Messenger (Sm) made the fingers and toes equal (in respect of blood wit, even thumb and little finger).

3495. Sayyiduna Ibn Abbas (R) narrated that Allah's Messenger (Sm) said, "(In respect of blood wit,) the digits are equal, the teeth are equal, the front tooth and the molar tooth are equal, this and this (little finger and thumb) are equal."

BLOOD WIT FOR DHIMMI INFIDEL IS HALF THAT FOR MUSLIM

3496. Sayyiduna Amr ibn Shuayb (R) narrated from his father (Shuayb (Rh)) from his grand father that in the year of the conquest (of Makkah), Allah's Messenger (Sm) delivered a sermon and (after praise and glory of Allah) said, "O you people! There is no confederacy in Islam but the ones that existed during the jahiliyah (ignorance period), surely Islam makes it stronger. The believers are like one hand against those besides them (in spreading good and helping each other). The humblest of them extends protection and the must distant of them has (as much) right. Their army regards also as rightful (to who spoils as are not with it, but) who are at home.

No believer may be killed for an (enemy) infidel. The blood wit for an infidel (dhimmi) is half that for a Muslim.

(The collectors of zakah (Annual due charity) may pay heed!) Animals are not to be brought to be valued for zakah (Annual due charity). (And, the assesses for zakah (Annual due charity) may also pay heed!) Animals must not be taken away (far off) to their pastures. But, Zakah (Annual due charity) will be collected only in their residences."

And according to a version, he said, “The blood wit for the covenant holder is half that for a freeman.”

COMMENTARY: The Arabic word in the text is (hilm). It means to make an agreement, to bind into a contract. In pre-Islamic times, people used to bind each other with covenants, like agreeing to inherit one from the other, helping each other in disputes and fighting and if one of them was penalized, the other would help pay the penalty. Allah’s Messenger (Sm) forbade the making of such contracts because it was an unjust custom and has no place in Islam. Apart from that, the people of the jahiliyah (ignorance period) also agreed to help the oppressed, treat relatives with kindness and uphold human rights. This was an excellent form of mutual love and co-operation, so the Prophet (Sm) permitted this kind of covenants in Islam, too.

The words ‘most distant of them has right and their army regards as rightful (to spoils) who are at home’ This portion has been elaborated in the commentary on hadith (#3475) of Sayyiduna Ali (R). Also, the words that a believer will not be killed for an infidel have been explained there.

As for the blood wit for an infidel being half of the for a believer, this is what Imam Maalik (Rh) follows. Imam Shafi’I (Rh) (according to one opinion) and Imam Ahmad (Rh) say that the blood wit for an infidel is one-third the blood wit for a Muslim. Imam Abu Hanifah (Rh) holds that the blood wit for an infidel is equal to that of a Muslim. It must be remembered that this entire discussion is about a disbelieving dliimmi. The enemy disbeliever is not entitled to a blood wit. According to a haidth quoted in the Hidayah, “Every dhimmi who has a covenant with the Islamic state is entitled to a blood wit of one thousand dinars as long as the covenant is valid.” After that it is stated that Abu Bakr (R) Umar (R) and Uthman (R) abided by this hadith but when Muawiyah (R) came he made it half.

The Hidayah has also quoted Sayyiduna Ali (R) as saying, “The dhimmis pay the jizyah to us so that their blood and their properties may be safe and protected like our own are.” In other words, the compiler of the Hidayah wishes to establish that the blood wit for a dhimmi is like that for a Muslim. He writes that whatever is ascribed to the other sahabah (R) against this cannot contradict these well-known and authentic aathar and sayings.

The instructions to the collectors of zakah (Annual due charity) and payers of zakah (Annual due charity) have been treated very exhaustively in the Book of zakah (Annual due charity). We suffice here with a brief explanation. Jalab is the zakah (Annual due charity)-collector who halts at a place distant from the owners of the animals and instructs them to bring their animals to him. And janab is the owner of the animals who takes his animals to a place very far away from the zakah (Annual due charity). Collector and asks him to come to the animals land assess them.

The Prophet (Sm) forbade both of them to behave in such way. Thus, by following his directions, neither of them would face inconvenience. The zakah (Annual due charity) would be received at the residences of the owners.

BLOOD WIT ON ACCIDENTAL KILLING

3497. Sayyiduna Khishf Ibn Maalik (Rh) reported that (Sayyiduna) Ibn Mas’ud (R) to narrated that Allah’s Messenger (Sm) gave his decision in case of accidental killing that blood money should be paid thus: twenty she-camels and twenty male in their second year, twenty she-camels in their third year, twenty she-camels in their fifth year and twenty she-camels in their fourth year.

The sound opinion is that this hadith is mawquf at Ibn Mas'ud (R) and not traced to the Prophet (Sm).

It is reported in Sharh us-sunnah (Prophet's (Sm) practice) that the Prophet (Sm) to paid blood money for a man who was slain at Khaybar from the camels received for zakah (Annual due charity), one hundred camels, none of them being ibn Makhad (or in its second year). Rather, there only were ibn Labun (in their third year), and they were all of them males.

(Detailed account will follow in the chapter al-Qasamat, about the blood money payment at Khaybar)

COMMENTARY: The hundred camels of blood wit of accidental killing should be of five kinds. There is no disagreement about it but the scholars differ on how they are to be made up. Imam Abu Hanifah (Rh) abides by this hadith in their composition but Imam Shafi'I (Rh) includes Ibn Labun (Camels of two years complete) instead of Ibn Makhad (of one year complete).

Mulla Ali Qari (Rh)'s book Mirqat maybe seen on this question of disagreement on the composition of the one hundred camels. In considering this, it must be remembered that the Prophet (Sm) had paid the blood money to that man only as a gesture of good-will, not because of an obligation.

The other version (of Sharh us-sunnah (Prophet's (Sm) practice)) is contradictory to the first in that it replaces Ibn Makhad with Ibn Labun, and so upholds the view of Imam Shafi'I (Rh). This too, has been covered by Mulla Ali Qari (Rh) Mirqat.

BLOOD WIT IS BASED ON CAMELS

3498. Sayyiduna Amr ibn Shuayb (R) narrated from his father from his grandfather that the time of Allah's Messenger (Sm) the value of the (one hundred camels of) blood wit was eight hundred dinars or eight thousand dirhams. And, those days,

the blood wit for the people of the Book (the Christians and Jews) was half the blood wit for the Muslims.

He said (further) that it continued (to be practiced) in this way till Umar (R) became Khalifah and delivered a sermon in which he said, "The camels have become dear!"

The narrator went on to say: Umar (R) fixed the value for those who had gold at one thousand dinars, for those who had silver at twelve thousand (dirhams), for those who had cows at two hundred cows, for those who had sheep at two thousand sheep, and for those who had suits of clothing (as trade merchandise) at two hundred pairs of clothing.

The narrator added: He left the blood wit for the dhimmi unchanged (at four thousand dirhams as during the time of the Prophet (Sm) without raising it in proportion to the increase he made in the (other) blood wit.

COMMENTARY: Some people say that this hadith is evidence that the measure of blood wit is camels. The amounts of gold and of silver were calculates relative to one hundred camels. Hence, Imam Shafi'I (Rh) opines that the value of these two metals can differ relative to appreciation (or depreciation) of the price (of camel).

Ibn Maalik (Rh) said that pairs (or suits) of clothing mean a lower wrapper and a sheet of cloth (for the upper torso).

Teebi (R) said that the blood wit for a Muslim was fixed at twelve thousand dirhams but that for a dhimmi was unchanged at four thousand dirhams, so it became one-third of the blood wit for a Muslim. So, the Shafi'I (Rh) and their like-minded hold that the blood wit for the dhimmis is one-third that of Muslims, but the Hanafis (Rh) say that both are at par. Shamni (Rh) gives (the juristic ruling that is in practice as) value of blood wit in: Gold at one thousand dinars, silver at ten thousand dirhams,

and camels at one hundred camels. However, Imam Shafi'I (Rh) contends that blood wit in silver is at twelve thousand dirhams.

3499. Sayyiduna Ibn Abbas (R) said that the Prophet (Sm) fixed the blood wit at twelve thousand (dirhams).

BLOOD WIT BELONGS TO HEIRS OF THE MURDERED

3500. Sayyiduna Amr ibn Shuayb (R) narrated from his father from his grand father that Allah's Messenger (Sm) used to fix the blood wit against accidental death at four hundred dinars or their value in silver (which was four thousand dirhams) for villagers (or urban dwellers) and he based it on the price of camels. Thus, when the camels became costly, he raised the amount (of blood wit) to be paid, but when they became cheaper, he reduced the amount (of blood wit) payable. (This is why) in the time of Allah's Messenger (Sm), the amount (of blood wit) was between four hundred and eight hundred dinars whose value in silver was eight thousand dirhams.

The narrator added: Allah's Messenger (Sm) decided that those who had cow should pay two hundred cows and those who had sheep should pay two thousand sheep. Allah's Messenger (Sm) (also) said that the amount of blood wit is the right of the heirs of the person who is killed.

And, Allah's Messenger (Sm) decided (also) that the blood wit payable by a woman is to be divided among her paternal relatives and the killer should be deprived of inheritance (if he has killed one from whom he is eligible to inherit and will get neither from his blood wit nor from his legacy).

COMMENTARY: Teebi (Rh) said that this hadith too is evidence that the measure of blood wit is camels. It is fixed

on the basis of camels and is wajib (obligatory) to pay at the number of camels fixed. This is the opinion of Imam Shafi'I (Rh).

The blood wit on a woman who commits a murder will be paid by her asabat, meaning, her helpers and family. This is as the command for a man.

A woman will not be responsible as a slave is, for, while it is wajib (obligatory) on a slave to pay the blood wit imposed on him on his own and is not payable by his asabat, the bloodwit imposed on a woman is not wajib (obligatory) on her to pay but payable by her asabat.

PERPETRATOR OF MURDER RESEMBLING DELIBERATE MURDER IS NOT EXECUTED

3501. Sayyiduna Amr ibn Shuayb (R) narrated from his father from his grandfather that the Prophet (Sm) said, "Blood wit for murder that resembles deliberate murder is as severe as blood wit for deliberate murder, but the perpetrator of murder resembling deliberate murder is not be killed."

COMMENTARY: While diyah or blood wit against deliberate murder and against murder resembling deliberate murder resemble, qisas is liable on the former but not on murder that seems like deliberate. There should be no confusion that qisas (or retaliation) is also imposed on the perpetrator of murder that looks like deliberate, but it is imposed only on the former.

BLOOD WIT FOR LOSS OF SIGHT

3502. Sayyiduna Amr ibn Shuayb (R) narrated from his father from his grandfather that Allah's Messenger (Sm) gave verdict for an eye that (is wounded but) is in its place yet has lost sight that one-third of blood wit is payable.

COMMENTARY: If a person strikes another so that he loses his eyesight though the eye stands in its socket and the face retains its character then one-third blood wit will be wajib (obligatory) on the man responsible for the damage. It has been mentioned previously that if both eyes are lost the full blood wit is payable (one hundred camels), and if one is lost then half blood wit is payable.

Some Ulama (Scholars) say that the usefulness is not taken away completely in this case. So the blood wit for it should be as for a man who is beaten (but he loses no limb and suffers no wound) but he only gets a black body. The blood wit for it should be a proportionate hukhumah.

The word hukhumah is a terminology concerning blood wit, the valuation is called arbitration. It supposes the man to be a slave and calculates the depreciation in his value because of the wound. The amount of this decrease is the blood wit that is wajib (obligatory) of the man responsible to wound him. They maintain that the Prophet's (Sm) verdict of one-third blood wit means not the regular blood wit but that deduced through hukhumah.

Toorpushti (Rh) has concluded in a discussion on this hadith that it is questionable.

BLOOD WIT FOR THE UNBORN CHILD

3503. Sayyiduna Muhammad ibn Amr (Rh) reported from Abu salmah who said that Abu Hurayrah (R) narrated that Allah's Messenger (Sm) decided that the blood wit for miscarriage is a ghurrah. And a ghurrah is a male or a female slave, or a horse, or a mule.

Abu Dawud who transmitted it pointed out that Hammad ibn Salamah and Khalid Wasti transmitted this hadith from

Muhammad ibn Amr (R) but neither mentioned 'horse or mule'.

COMMENTARY: Allamah Nawawi (Rh) said that the ghurrah is something very exquisite. It is applied to man in the sense that Allah created him in the best of forms. Some scholars say that a narrator included horse and mule in ghurrah in this hadith on his own. Ghurrah is applied only to a human being who belongs to someone.

QUACK IS LIABLE TO PAY FOR PATIENT'S DEATH

3504. Sayyiduna Amr ibn Shuayb (R) narrated from his father from his grandfather that Allah's Messenger (Sm) said, "He who practices medicine but is not known as a physician (and someone dies at his hands) will be held responsible."

COMMENTARY: If anyone who is not a physician pretends to be one and treats patients one of whom dies, then all the ulama (Scholars) agree that blood wit will be wajib (obligatory) on his paternal relatives. However, he will not be killed in retaliation because he had the patient's permission to treat him.

BLOOD WIT WAS FORGIVEN TO THE POOR

3505. Sayyiduna Imran ibn Husayn (R) narrated that a boy who belonged to a poor family cut off the ear of a boy belonging to a rich family. His family members came to the Prophet (Sm) and pleaded, "We are, indeed, poor people (so we may not be asked to pay the blood wit)." So, he did not impose anything on them.

COMMENTARY: If a boy happens to cause loss or damage to anyone then because of neglect of a correct way, he will be classified as perpetrator of accidental wrong. The penalty for it

will be imposed on his relatives as wajib (obligatory). If a boy kills someone, then retaliation shall not be liable on him.

In this, case penalty was wajib (obligatory) on the boy's parents. However, the Prophet (Sm) condoned that because of their poverty and made no blood wit wajib (obligatory) on them. The boy who cut off the ear of the rich boy was not a slave but a freeman. If he was a slave then he would have had to pay the blood wit himself and the poverty of his masters would not have absolved him of the fine.

KILLING RESEMBLING DELIBERATE & ACCIDENTAL KILLING

3506. Sayyiduna Ali (R) said that the blood-wit for murder that resembles deliberate murder is (one hundred she-camels as wajib (obligatory)) of three kinds: thirty-three she-camels in their fourth year, thirty-three she-camels in their fifth year and thirty-four she-camels in their sixth year. All of them must be pregnant. According to another version, he said that blood-wit for accidental murder is four kinds of (one hundred she-camels as wajib (obligatory)): twenty-five she-camels in their fourth year, twenty-five she-camels in their third year, and twenty-five she camels in their second year.

3507. Sayyiduna Mujahid (Rh) said that Umar (R) decided that the blood wit for murder that resembles deliberate murder is thirty she-camels in their fourth year, thirty she-camels in their fifth year and forty pregnant she-camels in their sixth year.

(This hadith # 3507 upholds the contention of Imam Shafi'I (Rh))

BLOOD WIT FOR THE UNBORN

3508. Sayyiduna Sa'eed ibn Musayyib (R) narrated that Allah's Messenger (Sm) decided that a ghurrah be paid as blood wit for a child that is killed in its mother's womb. (Ghurrah is a male or female slave.) The man who was the recipient of this decision asked, "why should I be penalized" for one who has not eaten or drunk, or spoken, or cried? The like of it is dropped." Allah's Messenger (Sm) said, "This man belongs merely to the kahin (soothsayers)."

3509. Sa'eed (R) reported like it from Abu Hurayrah (R).

COMMENTARY: The kahin is a soothsayer. He speaks in rhyming verse to chant his listeners. However, it is eloquence and fluency that appeals to the listeners. The Prophet's (Sm) speech was such, more particularly his supplications. For example, this prayer:

O Allah, I seek refuge in You from the learning that is of no profit, and a heart that is not fearful...

Shamni (Rh) said that if anyone strikes a pregnant woman and she suffers a miscarriage, then the blood wit is a ghurrah, meaning five hundred dirhams payable by the tribe of the person striking the woman. He said that ghurrah is five hundred dirhams according to the ulama (Scholars).

If a pregnant woman is struck on her belly and a living child emerges from her womb and after that dies, then a full blood wit becomes wajib (obligatory).

OFFENCES THAT DO NOT MAKE PENALTY LIABLE

The word (Jinayat) is the plural of (jinayah). The word jinayah means 'offences committed against persons such as murder, wounding, drowning,' 'felony.' The preceding chapter

mentioned the punishments, blood wit, retaliation etc. that are imposed on jinayah. In this chapter such kinds of jinayah are mentioned for which no punishment becomes wajib (obligatory).

NO RESPONSIBILITY FOR AN ANIMAL'S ACTION

3510. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, '-The dumb animals! A wound caused by them is forgiven. (Falling in) a mine is forgiven. (Falling down) a well is forgiven.'

COMMENTARY: If an animal tramples, gores its horns, slaps with its tail or bites someone wounding or killing him, or it damages property then no compensation is payable, provided its keeper is not with it. If someone drives it, rides it or leads it, then that person will be liable for whatever damage to life or property the animal causes. This is what Imam Abu Hanifah (Rh) says.

Imam Shafi'I (Rh) contends that if the animal causes these things during day then nothing is payable or wajib (obligatory) on its owner. However, if any damage is caused by the animal at night then its owner is responsible and it is wajib (obligatory) on him to pay damages. It is the responsibility of the owners to lock or tether their animals in the night. By day, the fields, gardens and other things must be taken care of by their owners.

FORELEGS & HIND LEGS: It is stated in the Hidayah that one who drives the animal will be responsible for any damage that may be occasioned by its fore or hind legs. But, a person who leads the an animal behind him will be responsible for any damage caused by its fore legs only, not by its hind legs. The rider of an animal is answerable for anything the animal

destroys by treading it down, striking it with its head, forelegs or body, But not its hind legs or tail.

If there is a rider on an animal and also one who drives it then damages will be wajib (obligatory) on both.

MINE: If anyone falls into a mine or is buried in it then no damages are wajib (obligatory) on one who has dug the mine. If a person hires a labourer to dig a mine and he is buried when the mine collapses on him then no responsibility rests on the owner of the mine. This second possibility is not restricted hiring anyone to dig mines only but this rule applies also to other forms of hiring. The first possibility applies also to digging wells. If anyone digs a well on his own land or on a place where it is permitted then he is not responsible for damages when a passer-by falls into it.

NO DAMAGES PAYABLE WHEN DEFENDING ONESELF

3511. Sayyiduna Ya'la ibn Umayyah (R) narrated that he had participated with Allah's Messenger (Sm) in the battle of the jaysh ul-usrah (army of distress which was the Battle of Tabuk in 9AH) and he had a servant (with him). He (the servant) had a dispute with another man and they fought one another (over something). One of them bit another's hand, and he pulled out his hand from the mouth of the other who bit him. This (action) dislodged his front tooth which fell out and he went to the Prophet (Sm) (to complain) but He did not impose any damage for the front tooth, saying "Should he leave his hand in your mouth while you munched it like a male camel?"

COMMENTARY: The Prophet (Sm) did not agree to get the man who bit another's hand and lost his tooth in the process any compensation because the other man was defending

himself. He had no option but to pull out his hand from the other's mouth. It is stated in sharh us-sunnah (Prophet's (Sm) practice) that if a man tries to assault a woman and she attacks him to save herself and he dies, then nothing will be wajib (obligatory) on the woman, who was engaged in self-defence.

PRESERVING CHASTITY: Sayyiduna Umar (R) was asked to decide about a girl who was collecting wood in a desolate place when a man followed her to molest her. She picked up a stone and flung it at the rascal who died on being hit by it. Umar (R) gave judgment, "This killing is from Allah (who punished him to preserve the chastity of an innocent girl). By Allah, no blood wit will be imposed because of it." Imam Shafi'I (Rh) held the same opinion.

Similarly, it is also allowed to defend oneself and protect one's property against bandits and miscreants. One must first try to make them see reason. If they do not desist and one has to kill them to protect oneself (or one's property) then their blood is forgiven to him. (There will be no retaliation.)

DEFENDER IS MARTYR IF KILLED IN THE PROCESS

3512. Sayyiduna Abdullah ibn Amr (R) narrated that he heard Allah's Messenger (Sm) say, "He who is killed for his property (protecting it) is a martyr."

COMMENTARY: If anyone guards his property and someone kills him then he is a martyr. The same ruling applies to one who is killed while protecting his family members.

3513. Sayyiduna Abu Hurayrah (R) narrated that a man (came to the Prophet (Sm), "O Messenger of Allah, do tell me what (should I do) if a man comes to snatch my property?" He said, "Do not give him your property." He asked, "Tell me, what

if he fights with me?." He said, "Fight with him." He asked, "Tell me, what if he kills me?" He said, "Then you become a martyr." He asked, "Tell me,, what if I kill him?" He said, "He will go to hell." (And you will not be responsible for anything.)

COMMENTARY: This hadith urges the Muslims to resist strongly anyone who tries to hert them or cause them damage. This hadith arouses in the believers the spirit of courage. They should not show cowardice against anyone who tries to deprive them of their property and destroy them. A Muslim who has the strength of faith and trust in Allah is expected to face boldly the attacker, miscreant and mugger. He should prefer a death in an honourable manner than a disgraced life, and earn martyrdom. Or, he should get rid of the evil man consigning him to hell.

This hadith is evidence that even if the evil man is a Muslim then it is allowed to resist him and to kill him if that becomes necessary.

PEEPING EYES MAY BE PUT OUT

3514. Sayyiduna Abu Hurayrah (R) narrated that he heard Allah's Messenger (Sm) say, "If anyone peeps into your house (through a hole while the door is shut) and you have not given him permission (to enter) and you throw a pebble at him blinding his eyes thereby, then there will be no sin on you."

COMMENTARY: Imam Shafi'I (Rh) abides by the haidth in toto. Imam Abu Hanifah (Rh) says that it is a strong warning against peeping into any house and says that anyone who incapacitates an eye will have to pay damages.

3515. Sayyiduna sahl ibn Sa'd (R) narrated that a man peeped through a hole in the door of (the house of) Allah's Messenger (Sm) and Allah's Messenger (Sm) had a spike (in his hand)

with which he scratched his head. He (saw him peeping (into his house and) said, "If I had known that you were looking at me (deliberately) then I would have poked your eyes with it" (pointing to the spike). Seeking permission has been prescribed only because of the sight (that might not fall on non-mahrams)."

COMMENTARY: It is as bad to peep into another's house as it is to enter it without permission. Teebi (Rh) said that this hadith suggests that if anyone glances into someone's house unintentionally while passing before it, then he is not to be blamed.

THROWING PEBBLES UNNECESSARILY

3516. Sayyiduna Abdullah ibn Mughaffal (R) said that he saw a man throw pebbles holding (and aiming) them between his thumb and (fore) finger. So he said, "Do not throw pebbles because Allah's Messenger (Sm) has forbidden that pebbles be thrown in this manner, saying, 'Game cannot be caught by this thing nor may an enemy be wounded. Rather (it is a vain pursuit whereby) you might break a tooth or slash an eye.'"

COMMENTARY: The Prophet (Sm) disallowed this pursuit because nothing is gained from it but disputes may arise. People may quarrel unnecessarily. The same ruling applies to every such vain, meaningless thing.

DO NOT DISPLAY WEAPONS IN PUBLIC

3517. Sayyiduna Abu Musa (R) narrated that Allah's Messenger (Sm) said, "When any of you comes to our mosque or our market, or passes along, and has with him arrows, he must keep them covered (in their quiver, or hold them in his hand) lest he cause injury to any Muslim by them."

COMMENTARY: Not only in the mosques and markets but in every such place as there is a gathering of Muslims, one must carry his weapons carefully. They could be arrows, swords, guns, or whatever kind. A slight negligence could wound a Muslim.

DO NOT POINT A WEAPON AT A MUSLIM

3518. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "Let not any of point a weapon at his (Muslim) brother, for, he cannot say perhaps the devil might take it away from his hand and (because of it,) he might land in a pit in hell."

COMMENTARY: The devil is always on the qui vive. If a person make a mistake, the devil tempts him to commit sin. If he points a weapon at his Muslim brother, he might be careless and hurt him. That might mean hell.

3519. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "If anyone points (a weapon or something of) iron at his (Muslim) brother then the angels curse him till he puts it aside, even if he is his brother having the same father and mother.

COMMENTARY: If anyone points at his brother a piece of iron, clearly he may not be meaning to threaten him. He might be jesting. But, even then the angels curse him. Thus it is emphasized that anything of iron or a weapon must not be pointed at a Muslim.

3520. Sayyiduna Ibn Umar (R) and Sayyiduna Abu Hurayrah (R) narrated that the Prophet (Sm) said, "He who picks up a weapon against us (even in jest) does not belong to us." (Meaning, 'he does not follow our ways') The version (of

Muslim) adds: "He who cheats us (by not disclosing defect of what he sells) does not belong to us."

3521. Sayyiduna Salamah ibn Al-Akwa (R) narrated that Allah's Messenger (Sm) said, "He who draws a sword against us (even in jest) does not belong to us."

DO NOT PUNISH ANYONE

3522. Hisham ibn Urwah (Rh) said that his father narrated that Hisham ibn Hakim passed by certain people in Syria from the Anbath (Nabateans) who were made to stand in the sun and olive oil was poured on their heads. He asked, "What is this?"

He was told, "They are being punished for (not paying) the kharaj (homage revenue)" (land tax). Hisham said, "I bear witness that I had heard Allah's Messenger (Sm) say. "Surely, Allah will punish in the hereafter, those who punish the people, in this world."

ALLAH'S WRATH ON THE OPPRESSORS

3523. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "If you live long, you shall see soon people holding in their hands something like oxtails (meaning, whips). They will begin the morning and the wrath of Allah will be on them and in the evening Allah's severe anger will be on them."

Another version has: 'in the evening Allah's curse is on them.'

COMMENTARY: The 'people you will see' will be the stooges of the oppressors or cruel rulers.

CLOTHED BUT NAKED

3524. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "Two kinds of the inmates of hell there are whom I have not seen: (i) A people who have with them whips resembling ox-tails with which they will strike people (unjustly). And (ii) women (who will be) clothed but (be nearly) naked. They will incite men and be disposed to them. Their heads will sway like the humps of bukht camels. These inciting women will not enter paradise and will not experience its fragrance though its fragrance can be perceived at a distance this-far-and-that-far."

COMMENTARY: The women mentioned will wear very fine see-through garments. Or, they will leave part of their body bare. Or, they will not put their scarf on their chest and belly but put it round their necks.

This could also refer to women who don different kinds of costly garments in this world but neglect the garment of taqwa (piety) (righteousness). It is only the garment of taqwa (piety) that will entitle them to paradise.

These women will incline men to themselves by their adornment, behaviour and walk and will lean toward men.

The bukht camels are the camels of khurasan with two humps (also known as Bactrian camels). The women arrange their hair in the manner of humps.

The women described in this hadith did not exist in the time of the Prophet (Sm). He did, however, forewarn of this kind of women. It is one of his miracles. The hadith says that these women will not enter paradise but there are such men too who have not been mentioned here. Qari Iyad (Rh) said that they will be admitted to paradise after going through their punishment, but not those women who perpetrate these things

and maintain that whatever they do is lawful and not wrong at all.

DO NOT STRIKE AT THE FACE

3525. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "When one of you fights (and beats another), he must spare the face because Allah created Aadam in His own likeness."

COMMENTARY: Creating Aadam (AS) in His likeness means bestowing on him His attributes of majesty and beauty. Or, it could mean a form that Allah has given only to human beings and described it as 'His' to bestow honour on Aadam (AS). It is as He says (blow into him My spirit) (15: 29) and ascribes the spirit to Himself to honour and show the excellence of mankind.

Some scholars say that the pronominal suffix in (Surathi, his likeness or his form) stands for Aadam's form. This form is distinct from the forms of all other creatures. It is full of excellence and beauty.

It will mean that Allah created mankind nobler than all creatures. Of all man's limbs, his face is the noblest and most honourable. It is the index of his form and perfection. Hence, one must refrain from striking it. The ulama (Scholars) say that this command is by way of mustahab (desirable).

FORBIDDEN TO LOOK INTO HOUSES

3526. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "If anyone slides a curtain and peeps into a house before receiving permission (to enter) and sees that which ought not to be seen of his family, then he touches the limit that is not lawful for him to touch. If a man (from the

house) challenges him when he looks in and puts out his eye, I will not hold him responsible. (And, I will not impose any penalty on him.) However, if a man goes by a door that has not curtain and is not shut and he looks in, then he has not committed a sin. Rather, sin is committed by the people of the house.

(They ought to have shut the door and drawn the curtain)

COMMENTARY: It is wajib (obligatory) for the family to keep the door of their house shuts or draw a curtain over it.

DO NOT HAND OVER OR TAKE UNSHEATHED SWORD

3527. Sayyiduna Jabir (R) narrated that Allah's Messenger (Sm) forbade the handling of an unsheathed sword.

THONG OF SANDAL MUST NOT BE SNAPPED BETWEEN TOES

3528. Al-Hasan (Rh) reported that Samurah (R) narrated that Allah's Messenger (Sm) disallowed the snapping of the strap of a sandal between two toes.

COMMENTARY: These two hadith forbid the two things by way of compassion.

BEING KILLED WHILE PROTECTING RELIGION, LIFE & PROPERTY

3529. Sayyiduna Sa'eed ibn Zayd (R) narrated that Allah's Messenger (Sm) said, "He who is killed while defending his religion is a martyr. He who is killed while defending himself is a martyr. He who is killed while protecting his property is a

martyr. And, he who is killed while protecting his family is a martyr.

COMMENTARY: If a disbeliever or an innovator ridicules Islam on the face of Muslim who contends with him over that but is slain then in this case the Muslim attains martyrdom. The ulama (Scholars) say generally that if anyone has evil intentions against a person's life, property or family, then he must first try to convince him out of it. If he does not see sense, then, he may use force and if he kills the evil man then no penalty is due from him. But, if he himself is slain then that is martyrdom for him.

DO NOT RAISE SWORD AGAINST A MUSLIM

3530. Sayyiduna Ibn Umar (R) narrated that the Prophet (Sm) said, "There are seven gates of hell. One of these gates is for him who draws a sword against my utmah," or, he said, "against Muhammad's utmah."

And the hadith of Abu Hurayrah (R) "The treading of the foot is forgiven..." is mentioned in the chapter on al-ghasab (wrongful appropriation) hadith # 2952.

AL-QASAMAH - OATHS

The Arabic word is al-Qasamah. It is to take an oath. In Sari'ah, it refers to a murder in a village or neighbourhood, or anywhere near to it, when the murderer is not traced, then the state or government should investigate. If the murderer is traced, then the law will take its course against him. If not, then fifty men of that place (selected by the next of kin of the slain man) will be put to oath. Each of them shall depose in this way, "By Allah (or, I swear by Allah), neither have I killed him nor do I know who has slain." This is as Imam Abu Hanifah (Rh) contends and it is based on the well-known hadith.

(The plaintiff should present a witness while the defendant must take an oath.) It is suggested also by the haidth # 3531.

The contention of Imam Shafi'I (Rh) j and Imam Ahmad (Rh) is that if there was animosity between the inhabitants of the village or locality, or of its surroundings. (Where the body is found and the murdered man, or some strong pointers are found suggesting that someone there could have been the murderer, then the next of kin of the murdered man will be put to oath. They will depose, "We swear by Allah, you have killed him." If they refuse to take the oath, then the accused will be made to swear. This is indicated by the first hadith of this chapter (#3532)

Qisas, or retaliation is not wajib (obligatory) when resorting to qasamah, even if the accusation is of deliberate murder. But, diyah or blood wit is wajib (obligatory) in this case (oath-taking) whether the accusation is of deliberate murder or of accidental murder. However, Imam Maalik (Rh) said that if it is an accusation of deliberate killing then qisas should be imposed. Imam Shafi'I (Rh) also said the same thing in his

ancient ruling. It must be known that this form of qasamah was prevalent during the jahiliyah (ignorance period) too. The Prophet (Sm) retained it. He passed judgment according to it for the slain Ansar whose murder the ansars had blamed on the Jews of the Khaybar.

WHO WILL BE PUT TO OATH

3531. Sayyiduna Rafi ibn Khadij (R) and Sayyiduna Sahl ibn Abu hathmah (R) narrated that Abdullah ibn Sahl (R) and Muhayyisah ibn Mas'ud (R) came to Khaybar. When they separated from one another (one day) among the palm trees and (finding him alone) someone killed Abdullallah ibn Sahl (R) (Thereafter) Abdur Rahman ibn Sahl (R) (the real brother of the slain Abdullah) and the (two) sons of Mas'ud, Huwayyisah and Muhayyisah (paternal cousins of the slain man) came to the Prophet (Sm) and informed him of what had happened to their relative. Abdur Rahman (R) (the brother of the slain man) who was the youngest of the lot was the first to speak. The Prophet (Sm) said to him, "Kabbir al-Kubr" (Respect the eldest of you. Let him speak.) Yahya ibn Sa'eed (Rh) (a narrator of this hadith) said that the Prophet's (Sm) words meant, 'Let the eldest take charge of speaking.' Then, they spoke (meaning the eldest of them). The Prophet (Sm) said, "If fifty of you take oaths then you will be eligible to seek blood wit or retaliation for your man who is murdered." Or, he said, "your companion." They submitted, "O Messenger of Allah, it is something that we had not seen. (We cannot say definitely who had killed.)" He said, "fifty of the Jews will take oaths and acquit themselves." (Their oaths will prove them innocent.) They said, "O Messenger of Allah, they are disbelievers. (Their oaths are meaningless and unreliable.)" So (to bury the mischief) Allah's Messenger (Sm) paid the blood wit himself (to the heirs of the slain man).

According to another version: he said, "Swear fifty oaths and be entitled to the blood wit of your man who is murdered," or, he said, "Your companion." Then Allah's Messenger (Sm) himself paid his blood wit amounting to one hundred she-camels.

COMMENTARY: The person who is the eldest must be honoured. He should initiate conversation.

This hadith is evidence that it is allowed to plead in matters of hudud or prescribed punishments, even for those who are present the guardian of the deceased was his real brother, Abdur Rahman ibn Sahl (R) while Huwayyisah and Muhayyisah were his paternal cousins.

This hadith says that the plaintiff should be put to oath first. But, the Hanafis say that the defendant is to be made to swear initially.

DEFENDANT SHOULD BE PUT TO OATH FIRST

3532. Sayyiduna Rafi ibn Khadij (R) narrated that a man of the Ansar was killed (and he was Abdullah ibn Sahl (R)). His relatives went to the Prophet (Sm) and mentioned to him what had happened. He asked them, "Do you have two witnesses who might testify to the murderer of your man?" They submitted, "O Messenger of Allah, no Muslim was there at the time. Only Jews were there (and they are known to create mischief) and they are impudent enough to perpetrate things more grave than that." He said, "Then select fifty of them and put them to oath." But, they did not agree (to put the Jews to oath knowing that they would not hesitate to take false oath). So, Allah's Messenger (Sm) paid his blood wit himself.

COMMENTARY: Mulla Ali Qari (Rh) points out that the defendants are called upon to swear first. The Hanafis observe

this practice. He has mentioned all arguments of different imams and concluded that the Hanafi practice is correct.

KILLING APOSTATES & THOSE WHO STRIVE TO CAUSE CORRUPTION

APOSTATE IS PUT TO DEATH

3533. Sayyiduna Ikrimah (R) narrated that some Zindiqs were brought to Sayyiduna Ali (R) who had them burned. This news was conveyed to (Sayyiduna) Ibn Abbas (R) who said, "Were I there, I would not have burned them because of the prohibition of Allah's Messenger (Sm), 'Do not inflict anyone with the punishment of Allah' (like consigning anyone to the fire). Rather, I would have killed them because of the saying of Allah's Messenger (Sm), "Those who change their religion, kill them.""

COMMENTARY: In reality, the zindiqs were a section of the Majusis who follow the book zand of Zardasht Majus as corrupted. However, in common parlance, every one who has apostated from his religion is called a zindiq (an atheist or a hertic, too).

In this hadith, too, the zindiq are those people apostated from Islam. Some ulama (Scholars) say that they were some of the followers of Abdullah ibn Sabsa. They pretended to be Muslims in order to create mischief and disorder in Islam and to mislead the Muslims. They claimed that Sayyiduna Ali (R) was divine. Hence, he had all of them arrested and demanded of them that they should repent and refrain from creating mischief. But, they did not submit.

Sayyiduna Ali (R) then had a large pit dug and had a fire kindled in it. Then he had them cast into the pit of fire.

It is reported that when Sayyiduna Ali (R) learnt of the statement of Sayyiduna Ibn Abbas (R) he confirmed, “indeed Ibn Abbas (R) has spoken the truth.”

This means that Sayyiduna Ali (R) had used his ijtihad (discretion) and there was wisdom in having all of them burnt. He wanted that to serve as a warning to other people to refrain from such mischievous activities.

DO NOT INFLICT PUNISHMENT OF BURNING

3534. Sayyiduna Abdullah Ibn Abbas (R) narrated that Allah’s Messenger (Sm) said “The fire! No one punishes with it, but Allah.”

(It is not fitting for any man to punish another for a crime whatever kind it be with fire).

THE KHAWARIJ PIN POINTED

3535. Sayyiduna Ali (R) narrated that he heard Allah’s Messenger (Sm) say, “Towards the end of this age, a people will arise who will be young but foolish. They will speak good words of the people with their tongues but faith will not go past their throats. (This means that their salah (prayer) will not be accepted.) They will exit from religion (meaning, obedience to the ruler and the ulama (Scholars)) as an arrow gets past the game. So wherever you come across them, kill them, for a reward for killing them awaits on the day of resurrection those who kill them.”

COMMENTARY: They will speak good words of the people like the Quran. The Mishkah has it as translated but the Masabih has that they will speak words of the good people like the ahadith of Allah’s Messenger (Sm). The ulama (Scholars) say that the construction of the sentence as in the Mishkah is

more correct because the ahadith say that the Khawarij will recite the verses of the Quran and give them their own wrong meaning to uphold their own false beliefs.

These people will get away from the obedience to the Imam (religious leader) and true scholars instantly without learning anything from them just as an arrow shoots past spotless. Teebi (Rh) said that the similitude of these people, when they enter religion and withdraw from it, is like the arrow that strikes a game from one side and withdraws from the other without receiving anything from its blood or flesh. They receive no influence of religion at all. They are disobedient to the ruler and the state and they do not hesitate to pick up arms against the people. They emerged first in the time of Sayyiduna Ali (R) and he annihilated most of them.

RULING OF ULAMA (SCHOLARS) ABOUT THE KHAWARIJ: Khattabi (Rh) said that the ulama (Scholars) of this ummah agree that the community of the Khawarij are misled but, in spite of that, they are one of the sects of the Muslims. Hence, intermarriage is allowed with them, it is proper to eat animals slaughtered by them and their testimony is acceptable. It is reported that Sayyiduna Ali (R) was asked whether they are disbelievers. He said, "Indeed, they have fled to us from disbelief. How then may we call them disbelievers?" He was then asked, "Are they hypocrites?" He said, "A hypocrite remembers Allah but a little. So, we cannot call them hypocrites too," Then he was asked, "After all, what are they?" Sayyiduna Ali (R) said, "They are a sect of the Muslims who have succumbed to error and mischief. They have turned blind and dumb." In short, the Khawarij are a sect of the Muslims. They have gone astray. Their fundamental belief is that a person becomes an infidel not only by committing a major sin but also when he perpetrates a minor sin.

PROPHET (Sm) HAD FORETOLD THE COMING OF KHAWARIJ

3536. Sayyiduna Abu Sa'eed Khudri (R) narrated that Allah's Messenger (Sm) said, "My ummah will divide (soon) into two groups. From among them such a (third) group will arise as will secede (from obedience and truth). They (of the two groups) who are nearest to the truth will assume the responsibility to eliminate them."

COMMENTARY: One of the two groups are supporters of Sayyiduna Ali (R) and the second of Sayyiduna Mu'awiyah (R). A third emerged from them. They are called the Khawarij. Sayyiduna Ali (R) was the nearest to the truth and he shouldered responsibility to annihilate them and to nip their mischief in the bud.

MUSLIM KILLING A MUSLIM IS NEAR DISBELIEF

3537. Sayyiduna Jareer (R) narrated that Allah's Messenger (Sm) said during the Farewell Pilgrimage (known as Hajj (pilgrimage) atul wada), "Beware! Do not revert to disbelief after me, "striking off each other's neck."

COMMENTARY: Perhaps someone had asked, "How could one revert to disbelief?" So, the prophet (Sm) said, "By striking each other's necks" This crime resembles what the disbelievers do and it takes one near to disbelief.

3538. Sayyiduna Abu Bakrah (R) narrated that the Prophet (Sm) said, "When two Muslims met and (in such a way that) one of them raises arms against his (Muslim) brother, they both come to the border of hell. Then, if one of them kill the other, both of them will enter it."

According to another version from him, he narrated that the Prophet (Sm) said: "When two Muslims meet one another with

their swords, the killer and the killed will go to hell.” He asked, “This one is the killer (and one understands why he goes to hell) but what causes the one killed (to go to hell)?” He said, “He too was as keen to kill his companion (through he did not succeed).

COMMENTARY: The ulama (Scholars) say that both of them will be sent to hell when neither of them is justified. If one of them is right then only the unjust will be consigned to hell. It applies only if murder is premeditated and is not omitted in confusion.

The words, “He too was keen to kill his companion,” show, as Ibn Malik (Rh) says, that even intention to commit an unlawful thing makes one liable to reckoning. However, if one of them had merely defended himself and did not have any intention to kill the other, then he will not be questioned because Shari’ah (divine law) permit defensive measure.

FATE OF APOSTATES & BANDITS

3539. Sayyiduna Anas (R) narrated that some people of ‘Ukl come to the prophet (Sm) and embraced Islam. The climate of Madinah did not suit them (and they had swollen bellies and they turned pale). Therefore, he instructed them to go (outside the city) to (the place of) the camels of sadaqah (charity) and drink from their urine and their milk. They did that and recovered. After that they (strayed and) apostatized and (to add to that) they killed the herdsman and drove off (with) the camels. So (on learning of it), the Prophet (Sm) sent (some) men behind them. They were brought. He had their hands and feet severed and their eyes blinded. Then he did not have them cauterized (to disinfect and) to stop flow of blood (as was the custom to prevent bleeding). So, they died finally. According to another version: Hot needles were scratched in

their eyes. According to yet another version: He ordered that needles should be heated and they were driven in their eyes. Then he had them cast out on the harrah (a rockyland to the rest of Madinah). They asked for water but nothing of it was given to them till they died.

COMMENTARY: Imam Muhammad (Rh) has concluded from this hadith that the urine is pure of those animals whose flesh is lawful to eat. Imam Maalik (Rh) in and Imam Ahmad (Rh) also say the same thing: But, Imam Abu Hanifah (Rh) and Imam Abu Yusuf (Rh) hold that the urine of these animals is impure any way for those people, the two Imams contend that the Prophet (Sm) was informed by revelation that the cure of their malady by in urine of camels. So he gave that command to these people specifically. Imam Abu Hanifah (Rh) said that the urine of camels is not lawful to drink at all, not even as medicine, for, no one agrees that cure lies in urine. But, Imam Abu Yusuf (Rh) said that camel's urine is lawful for medical treatment.

Ibn Maalik (Rh) said that the Prophet (Sm) has forbidden mutilation, yet he awarded these apostates and bandits, this kind of punishment. Perhaps they had done the same thing to at the keepers of the camels, so the Prophet (Sm) gave them this punishment in qisas (or retaliation). Or, their crime was great and warranted this kind of punishment, for they had turned apostates and had killed the keepers of the camels and had plundered the property of zakah (Annual due charity). The Imam (or ruler) has right to punish the criminal with different punishments to keep off others and to restore peace. Hence, the prophet (Sm) had this in mind when he awarded them to punishment.

Imam Nawawi (Rh) said that the ulama (Scholars) have different opinions about the significance of this hadith.

Some scholars say that the event referred to in this hadith had taken place before the verses were revealed prescribing punishment under hudud and for bandits and robbers. Also, the Prophet (Sm) forbade mutilation after this event. In this sense, this hadith is abrogated.

Other scholars, however, insist that this hadith is not abrogated. Rather, the verse was revealed on this occasion that the bandits should be awarded these punishment; they should be killed or hanged, or one hand and one foot of theirs should be severed.

But, the prophet (Sm) had awarded them the punishment under qisas (or retaliation). The same thing was done to them as they had done to the herds of the camels. The question remains: why were these bandits not given water when they were dying? The ulama (Scholars) say that this too was in retaliation. They too had denied water to the keepers of the camels and had tortured them to death;

Some other scholars say that the Prophet (Sm) had not forbidden them water. Rather, the people had expressed and demonstrated their extreme hatred for these criminal and they were they denied them water on their own.

As for the ruling, the ulama (Scholars) rule unanimously that it is wajib (obligatory) to kill one who is awarded the death penalty. But, if he asks for water, then it should not be denied to him.

We reproduce here a relative portion from Tirmidhi hadith # 72 (Darul Isha'at Karachi)

RULING: This hadith touches on two juristic question: the urine of lawful animals and use of unlawful things as medicine. The contention of Imam Abu Hanifah (Rh) in the first issue is that it is impure, but a mild (light) impurity. The reason is that when the scholars differ on the question, it calls for flexibility

in commands. The reason is that when the scholars differ on a question, it calls for flexibility in commands. The Hanafis rely on the hadith which calls upon Believer to guard themselves against drops of urine because generally it lead to chastisement in the grave. Their second evidence is the hadith # 70 (above) about the Prophet (Sm) coming across two graves.

Both these ahadith do not specify and kind for urine. One has to keep himself away from being defiled by urine itself.

When two narrations seem to be contradictory then one must resort to sunrise to reconcile them. Hence, the Hanafi thought seems more agreeable, for, urine of a lawful animal and of an unlawful animal are the same. If one impure then the other is too. Further, the hadith keep away from being defiled by urine is qawli (by word of mouth) and a prohibitive command. According to principle, the prohibitive one is preferred as a precautionary measure.

The Hanafis forward many explanations of the hadith of this chapter (under discussion).

1. The prophet (Sm) may have been informed by wahy that their cure lay in doing that (consuming camel urine).
2. He may not have instructed them to consume it but apply it externally.
3. He may have known that they were in reality disbelievers as, indeed, they apostatized thereafter.

THE SECOND QUESTION: Use of unlawful things as medicine. It is allowed to use them if it is an unavoidable situation. But, if there is no danger to life then there is a difference of opinion on the question. (Fadl Ahmad (Rh)).

MUTILATION IS DISALLOWED

3540. Sayyiduna Imran ibn Husayn (R) narrated: Allah's Messenger (Sm) used to encourage us to give sadaqah (charity) and (used to) forbid us to mutilate any body.

3541. Sayyiduna Anas (R) narrated the same hadith.

COMMENTARY: Muthlah is to mutilate or sever any limb of a body. Some say that it is forbidden to cut any limb of anybody. Others say that the Prophet (Sm) forbade it by way of makruh tanzih (disapproved for purification), but the more correct is that to mean that it is unlawful to do so.

As for the mutilation mentioned in the previous hadith (# 3539), we have explained there that it was done in retaliation.

PROPHET'S MERCY (R) TO ANIMALS

3542. Sayyiduna Abdur Rahman ibn Abdullah (Rh) reported that his father narrated that they were on a journey with Allah's Messenger (Sm). He went to relieve himself (at one point during the journey). They observed a hummarah (a small bird) and two young ones with it. They took away the young birds. The hummarah came and began to spread out its wings (in protest). When the Prophet (Sm) came (and saw it), he asked, "who has troubled this bird by removing its young? Give back to it its young ones." Then he observed the anthill that they had burned and asked "Who has burnt it?" They said, "We." He said, "It does not behave any one, but the Lord of the fire, that He should punish with the fire."

COMMENTARY: The hummarah is a bird of red colour, small like a sparrow. The hadith concludes with the message that no human being has a right to burn anyone in fire. As for ants, if they sting people without provocation, then they may be killed, otherwise it is not proper to kill them. It is forbidden to

burn down the ant hills and it is makruh (disapproved) to put them in water. If only one ant stings, then only that one should be killed. It is forbidden to kill the others with it.

WORST OF MANKIND FORETOLD BY THE PROPHET (Sm)

3543. Sayyiduna Abu Sa'eed Khudri (R) and Sayyiduna Anas Ibn Maalik (R) narrated that Allah's Messenger (Sm) said, "There will arise disagreement and dissension among my ummah. Some of them will be good at speech but evil in deeds. They will recite the Quran but it will not go beyond their throats. They will exit from the religion (meaning from obedience to the ulama (Scholars) and the imam) just as an arrow shoots past the game, not to return till the arrow returns to its notch. And, they are the worst of mankind and animals. Glad tidings are for them who kill them or who are killed by them! (Thus, those who contend against them to put on end to mischief and kill them or one killed have glad tidings in either way - as ghazis or as martyrs.) They (seem to) invite people to Allah's Book but are not among us (because they call for giving up the sunnah (Prophet's (Sm) practice) which are the base of exegesis of the Quran) He who fights against them is nearer to Allah than they are." Allah's Messenger (Sm) was asked (by his sahabah) (R) "O Messenger of Allah, what distinguishes them (from the others)?" He said, "At-tahleeq!" (shaving the heads).

COMMENTARY: The Prophet's (Sm) words means that there will be some people in his ummah who spread dissension and create disunity among the Muslims. Their symbol is that they will speak well but their deeds will be very bad. They will seem to be the only one who wish well for the religion and are sincere to Allah and His Messenger (Sm) and the Muslims but their deeds will be compatible with those who are tools of

Islam's enemy, aspirants of wealth and fame and slaves to base desires.

The words that they would recite the Quran...could be an elaboration of the previous words. Or, as Shatbi says, a separate phrase of substitution. Or, it explains the dissension itself; two sections will arise, one will be on the right and the other will be false. Teebi (Rh) said that this opinion is supported by the hadith (# 3536) and in this case the word (people) will be the qualified noun of the next sentence. The predicate is (will recite the Quran) and it describes the false sect. The true sect is then known (by itself) automatically. Their recital will be mere delivery and pronunciation of words. They will not derive any benefit from the verses of the Quran. Therefore, they will not believe in them and will not conduct themselves on the commands of the Quran.

The words could also mean that their recital will not be accepted by Allah and be accepted by Allah and will not go beyond their throats.

The hadith says that these dissenters and apostates will not return to religion till the arrow that is shot returns to its notch from where it was shot. Now, the arrow cannot do that so it is clear that the return of these people to religion is impossible. This particular sentence recalls the words of the Quran:

{...until the camel passes through the eye of the needle.} (7:40)

The message of the hadith is that those people are utterly ignorant and misled and are in a false impression that they are on the straight path already, so it is impossible for them to come to the folds of religion.

As for the final word (at-tahleeq - 'shaving the heads'), the Prophet (Sm) mentioned it because, in that time, the Arabs were not accustomed to shave their heads. This saying in

no way detracts from shaving head because it is a symbol of religion and obedience to Allah. It is the practice of the pious and the righteous.

Some scholars say that tahleeq does not mean 'shaving head' Rather, it means to get people to sit in circles as these apostates used to make them do to show off.

THREE POSSIBILITIES OF DEATH PENALTY

3544. Sayyidah Ayshah (R) narrated that Allah's Messenger (Sm) said, "It is not lawful to shed the blood of a Muslim person who testifies that there is no God but Allah and that Muhammad is Allah's Messenger, except for one of three reasons: Fornication after marriage which is punishable by stoning to death. One who comes out to fight with Allah and His Messenger (by resorting to robbery and rebellion), so he must be killed, or hanged, or imprisoned. And, one who kills someone (deliberately), so he must be killed in retaliation."

COMMENTARY: The Arabic word is (muhsin). He is a Muslim freeman, responsible and married who has had sexual intercourse with his wife. If he commits fornication then he is stoned to death.

The qazzaq (or robber) is given one of three punishments:

- (i) killing,
- (ii) hanging, or
- (iii) imprisonment.

If he could not rob but did kill someone in the process then he should be killed. And if he robbed as well as killed someone then he should be hanged. Imam Maalik (Rh) said that he should be killed by hanging, but Imam Shafi'i (Rh) said that he

should be killed first and his body must be hanged for others to see and take heed.

As for the third kind which is imprisonment. Imam Shafi'I (R) interprets the words of the hadith to mean that he should be exiled from place to place and never allowed to stay at any one place to deny him peace and comfort.

Imam Abu Hanifah (Rh) interprets the words to mean that he should be imprisoned.

The punishment of imprisonment (or exile) is enforced when he neither robs nor kills but he pesters the passers by instilling fear in them and creating chases.

This portion about punishment to robbers is derived from the verse of the Quran.

{Those who fight with Allah and His Messenger and run about trying to spread disorder on earth, their punishment is no other than that they shall be killed, or be crucified, or their hands and legs cut off from different sides, or they be kept away from the land (they live in)} (5:33)

The words [their hands and legs must be cut off from different sides] ought to have been in the hadith to make it agree with the verse. It is strongly possible that they were there originally in the hadith before the words 'or banished from the land' (or imprisoned) but the narrator may have forgotten to mention them, or he may not have included them preferring brevity.

The word (or) is found in the hadith as well as the Quran to elaborate but some scholars say that it suggest an option. The ruler was exercise his discretion to award any one of these punishments to the robber.

DO NOT FRIGHTEN A MUSLIM

3545. Sayyiduna Ibn Abu Layla (Rh) said that some of the sahabah (Prophet's Companions) (R) of Muhammad (R) narrated that they were on a journey one night with Allah's Messenger. One of them went to sleep and another approached him and placed a rope (round him). He took it and was alarmed. Allah's Messenger (Sm) (observed it and) said, "It is not lawful for a Muslim to frighten another Muslim."

DO NOT SURRENDER YOUR HONOUR TO BUY A NON MUSLIM'S IGNOMINY

3546. Sayyiduna Abu Darda (R) narrated that Allah's Messenger (Sm) said, "If anyone buys a land on which jizyah is imposed, then, indeed, he has revoked hijrah. And, if anyone removes an infidel's ignominy from his neck and puts it on his own, then, indeed, he has put Islam behind his back."

COMMENTARY: (Jizyah is a head-tax or a poll-tax imposed on non-Muslims in Islamic country against protection to them and they are called dhimmis. And hijrah is migration to Muslim land.)

If a Muslim buys from a dhimmi a land on which jizyah is payable then he will be liable to pay the jizyah that the seller had been paying. Because of this the Muslim will lose the honour and rights that he had acquired on emigrating to Islamic territory and will burden himself with the disgrace of a non-Muslim by shouldering the severity of the jizyah.

In other words, he puts on his neck the ignominy of (he infidel) and pays for it by surrendering his honour. Thereby, he makes disbelief stand for Islam.

Khattabi (Rh) said that in this hadith jizyah stands for kharaj (homage revenue) (which is a tax imposed on non-Muslims)

on land revenue). When a Muslim buys from an infidel a land on which Kharaj (homage revenue) is payable, then kharaj (homage revenue) will not be waived. The Muslim buyer will have to pay it.

Imam Abu Hanifah (Rh) rules accordingly.

MUSLIMS MUST NOT MINGLE WITH THE DISBELIEVERS

3547. Sayyiduna Jarir ibn Abdullah (R) narrated that Allah's Messenger (Sm) sent an expedition to Khath'am. Some of them sought protection by making prostration (meaning, offering salah (prayer) to make clear to the Muslim any that they were Muslims who had mingled with the disbelievers). But, their killing was hastened (for, the Muslim army did not trust them, imagining that they were deceiving them to save their skin, so they killed them too with the others). When the Prophet (Sm) learnt of that, he ordered that half the bloodwit should be paid for them (to their heirs). And, he said, "I am absolved of responsibility for every Muslim who resides among the polytheists." The sahabah (Prophet's Companions) asked, "O Messenger of Allah, why (is it so)?" He said, "Their fires should not be seen by one another."

(Muslims should stay so far away from the disbelievers for the fire to not be visible. If any Muslim mingles with them then its is as though he does not care for the command.)

COMMENTARY: The Prophet (Sm) decided to give half bloodwit for the Muslim to their heirs and not the full. The reason was that they had chosen to reside among the polytheists and had sort of abetted in their own killing.

It is to this that the Prophet (Sm) hinted when he declared that he was absolved of responsibility over Muslims who mingled with non Muslims.

He said that Muslims should reside so far away from the polytheists that their respective fires should not be visible to one another.

DO NOT KILL ANYONE WITHOUT FIRST FINDING OUT FACTS

3548. Sayyiduna Abu Hurayrah (R) narrated that the Prophet (Sm) said “faith forbids a sudden assault. So; a believer does not kill anyone suddenly.”

COMMENTARY: A Muslim must not take anyone’s life of a sudden and without ascertaining who the other is: a Muslim or an infidel. This same command applies for a dhimmi because he is under protection of the Muslim state. He should not be killed. Of course, this command does not apply to one who creates mischief in the Islamic state. Examples of this are ka’b ibn Ashraf the Jew and Abu Rafi they were killed spontaneously. The Prophet (Sm) was commanded by Allah to kill these two men. Some people say that these two men were killed before the prohibition (in this hadith) to kill anyone suddenly.

KILLER OF SLAVE WHO FLEES TO ENEMY TERRITORY WILL NOT BE QUESTIONED

3549. Sayyiduna Jarir (R) narrated that the Prophet (Sm) said, “When a slave runs away to polytheism (meaning, enemy territory), his blood becomes lawful.”

COMMENTARY: The hadith means that if anyone kills such a slave then he will not be answerable. The slave preferred to take refuge with the polytheists and leave the Islamic territory.

And if a slave not only flees to nemy land but also renegades then his blood is lawful to a great degree.

KILLING ONE WHO IS DISRESPECTFUL TO THE PROPHET (Sm)

3550. Sayyiduna Ali (R) narrated that a Jewess used to revile the prophet (Sm) and to find fault with him. One man (could not tolerate her words of insult of the Prophet (Sm) and he) strangled her to death. The Prophet (Sm) forgave him her blood.

COMMENTARY: If a disbelieving dhimmi is disrespectful to the prophet (Sm) then he violates the covenant which allows him protection by the Islamic state. He becomes like an enemy disbeliever whose blood may be shed lawfully. This is as Imam Shafi'I (Rh) says. Imam Abu Hanifah (Rh) says that his covenant does not become invalid because of it. This question may be found in books of fiqh (Islamic jurisprudence) toward the end of the Kitab ul jizyah. The Hidayh has also reproduced relative arguments.

SORCERER MAY BE KILLED

3551. Sayyiduna Jundub (R) narrated that Allah's Messenger (Sm) said, "The hadd (or the prescribed punishment) awarded to a sorcerer is to put him the he sword."

COMMENTARY: The scholars say that it is forbidden to practice sorcery.

They have different opinions about it. Imam Shafi'I (Rh) said that a sorcerer should be put to death if his sorcery leads to disbelief and he does not repent.

Imam Maalik (Rh) and some other scholars maintain that a sorcerer is an infidel, sorcery is disbelief, to learn and teach

sorcery is disbelief. The sorcerer must be killed and he (or she) should not be asked to repent whether he has cast a spell on a Muslim or on a dhimmi. The Hanafis hold that if the sorcerer's conviction is that the devil is the doer and does for him whatever he (the devil) likes, then the sorcerer is a disbeliever. If his conviction is that sorcery is merely an imagination or a thought of the mind, then he is not a disbeliever but a sinner. It is forbidden to learn sorcery.

In the marginal notes of Dhur Mukhtar, Tahtawi, it is written that sorcery is of three kinds: (i) fard (compulsory), (ii) haram, (iii) Ja'iz.

(i) If anyone learn it to remove the effects of the witchcraft of the enemy then it is fard (compulsory) (obligatory).

(ii) If anyone learns it to grow discord between husband and wife then it is haram (forbidden).

(iii) If anyone learns it to grow love between husband wife then it is Ja'iz (allowable).

The Hanbali scholars have differing views on magic being disbelief but their books are cited in Tanqih that the repentance of a sorcerer is not reliable. He becomes a disbeliever because of his sorcery.

He who practices sorcery on a Muslim must be killed.

Other things that are forbidden like sorcery are:

Soothsaying, astrology, divination and sleight of hand.

Not only learning and teaching but also earning through these things are forbidden.

3552. Sayyiduna Usamah ibn Sharik (R) narrated that Allah's Messenger (Sm) said, "Any man who goes out (against the imam of the time) and creates division among my utmah strike his neck off."¹

COMMENTARY: The imam is the axis on which the unity of the ummah is based. Every Muslim is bound to obey and be faithful to him. He brings all Muslims under one banner as a united force against the enemy of Islam. He keeps alive the glory of Islam. If anyone goes out of this united sphere, then he is not the perpetrator of just one evil but he tries to disturb the unity of the whole ummah.

Hence, if anyone has any misgivings, then they may be removed to his satisfaction. But, if he does not desist and no amount of effort to correct him works, then he must be killed. This is as Sayyiduna Ali (R) had done with the Khawarij.

KHAWARIJ WERE FORETOLD

3553. Sayyiduna Sharik ibn Shihab (Rh) narrated that he cherished a desire to meet one of the sahabah (Prophet's Companions) (R) of the Prophet (Sm) and to ask him about the Khawarij. (He wanted to know whether the Prophet (Sm) had foretold the ones that had begun to appear.) He met Abu Barzah (R) on the day of eed among some of his companions, and asked him, "Had you heard Allah's Messenger (Sm) mention the Khawarij?" He said, Yes! I did hear Allah's Messenger (Sm) with my ears and saw him with my eyes. Some property was brought to Allah's Messenger (Sm). He divided it. He gave to those on his right and to those on his left, but he gave nothing to those who were behind him. A man (among those) behind him got up and complained, 'O Muhammad, you have not been fair in dividing.'" He was a black man with all his hair shaved off and he was wearing a pair of white garments. This made Allah's Messenger (Sm) very angry. He said, 'who will you find after me more just than I am?' Then, he added, 'toward the end of time, a people will emerge and this one seems to be one of them. They will recite the Quran but it will not go past their

throats. They will (rebel against the ruler and) turn away from Islam (as rapidly) as an arrow shoots past the game at which it is shot. Their peculiar sign will be at tahleeq (their shaved heads). They will not cease to appear (in every age) till the last of them emerges with al-masih ad-dajjah. (He will come out against Easa (AS) when he descends on earth before the Last day). When you meet them, (kill them, for) they and the worst of man and animals.”

FACES OF THE DAY OF RESURRECTION

3554. Sayyiduna Abu Ghalib (Rh) narrated that Abu Umamah (R) saw some heads (of the Khawarij) hanging on the road of Damascus - or they were placed thereon. He remarked, “Dogs of hell! The worst of those slain under the sky (on the surface of the earth)! The best of those slain were the ones they have killed!” then he recited:

{On the day when (some) faces are brightened and other faces are blackened...} (3: 106, to the end)

Someone asked Abu Umamah (R), “Did you hear it from Allah’s Messenger (Sm) He said, “If I had not heard it once, twice, thrice,” (four times....) till he counted up to seven times. “I would not have mentioned it to you.”

(He meant that he had heard it very often from the Prophet (Sm)

COMMENTARY: The verse that Sayyiduna Abu Umamah (R) recited is in full:

{On the day when (some) faces are brightened and other faces are blackened, then as for those whose faces are blackened (it will be said to them), “Did you disbelieve after your belief? So taste the chastisement because of what you disbelieved.} (3:106)

Then ulama (Scholars) say about the heads mentioned in the hadith that they belonged to the apostates. Some others say that they belonged to the innovators. But, Sayyiduna Abu Umamah (R) said that they belonged to the Khawarij.

{The name of Abu Ghalib (Rh) was Hazawwar and of Abu Umamah Bahili (R) was Sudayy ibn Ajlan, the chief of the Bahilah tribe}.

KITAB-UL-HUDUD

PRESCRIBED PUNISHMENT

MEANING OF HADD (PRESCRIBED PUNISHMENT): the word hudud is the plural of the word hadd (prescribed punishment). The true meaning of hadd (prescribed punishment) is 'forbidden.' It also stands for 'obstruction.' In Shari'ah (divine law), hudud are the punishments that are prescribed by Allah's Book and the sun nah of Allah's Messenger (Sm) and are defined, too. Examples are punishment for robbery, adultery, drinking wine. If the basic meaning of hadd (prescribed punishment) 'obstruction' or 'prohibition, is remembered then it will be clear why the prescribed punishments are so-called. It is because these punishments hinder the creatures from committing sin, for, fear of them comes between man and crime.

Hududullah are also the maharim or a degree of consequently. It is as Allah, the Exalted, says:

{They are the limits of Allah, so do not go near them} (2:187)

It must be borne in mind that 'hudud' applies in both cases in its basic sense of 'forbidden' or 'prohibited' because marriage and being alone with the maharim is also forbidden and prohibited, as is to exceed the decrees or maqadir of Shariah.

DETAILS OF PUNISHMENT: If we look at the law relating to 'crime and punishment' in Shari'ah (divine law), we find that here are three kinds of punishments in Shari'ah (divine law). They are:

(1) The punishment that are prescribed and defined by Allah but they are enforced by the creatures. No outside power, like the ruler or the state, can interfere to prescribe them. This kind

of punishment is termed by Shari'ah (divine law) as Kaffarah (expiation or atonement). Examples of its application are expiation for breaking an oath, breaking a prescribed fast in Ramadan.

(2) The punishments that are prescribed by the Book of Allah and the sunnah (Prophet's (Sm) practice) of Allah's Messenger (Sm) and are defined too (for the defined crimes). While the ruler and the state have the right to enforce them, yet no one can enact them. Shari'ah (divine law) terms this kind of punishment 'hadd (prescribed punishment)', (Prescribed punishments or limits). Examples of their application are punishment for robbery, adultery, drinking wine.

(3) The book and the sunnah (Prophet's (Sm) practice) have not prescribed these punishment but they have defined the evil things call for these punishments as crimes. The ruler and the state are authorized to prescribe the punishment at their discretion according to the circumstances. They have the right to enact the law but within the limits prescribed by Shari'ah (divine law). This kinds of punishment are termed by Shari'ah (divine law) as Ta'zeer (also spelt tazir), or dictionary punishment.

DIFFERENCE BETWEEN HADD (PRESCRIBED PUNISHMENT) & TAZEER: The basic difference between hadd (prescribed punishment) and ta'zeer is that the former are punishments for violations of rights of Allah. No creature has a say in it. Ta'zeer is a term for punishments at the discretion of the creatures. The ruler may even forgive a person who is otherwise liable to receive this punishment. He may, depending on the circumstance and wisdom, reduce or increase or even change the punishment.

In short, hadd (prescribed punishment) is defined by Allah and no one is authorized to alter it. Ta'zeer is entrusted to the judge or the state. It is because of the lack of its determined nature that ta'zeer is not called hadd (prescribed punishment). Qisas is also a creature's right. He is authorized to forgive the culprit. So, it cannot be called hadd (prescribed punishment).

TAZEER (DISCRETIONARY PUNISHMENT)

The root of the word tazeer is azzar. It means to forbid, 'to stop', 'to blame'. In the terminology of shariah, this word (tazeer) is used in the sense of the punishment that is milder than hadd (prescribed punishment) and is awarded by way of a warning and a deterrent. It is called tazeer because it is aimed to prevent one from committing the deed (sin or crime) again because of which one had to undergo the punishment (tazeer).

DIFFERENCE BETWEEN HADD (PRESCRIBED PUNISHMENT) & TAZEER: Hadd (prescribed punishment) is the punishment prescribed by Allah's Book and the sunnah (Prophet's PBUH practice) of His Messenger and it is also specified. The ruler has authority only to enforce it but he is not allowed to enact it or to amend it. On the other hand, tazeer is punishment that is not specified by Allah's Book or the sunnah (Prophet's PBUH practice) of His Messenger PBUH. Rather, it is enforced at the discretion of the ruler. He may determine it according to circumstances and exigencies of the time and need of the moment.

THE MAXIMUM PUNISHMENT AS TAZEER

3630. Sayyiduna Abu Bardah ibn Niyar (R) narrated that the Prophet (Sm) said, "More than ten lashes must not be awarded (in punishment to anyone), except in one of the hadd (prescribed punishment) (prescribed punishment of the) of the hudud of Allah."

COMMENTARY: Though this hadith says that it is not allowed to award more than ten lashes in the cases of discretionary punishments or tazeer yet the ulama (Scholars) say that this hadith is abrogated.

As for the maximum number of lashes to be awarded in case of tazeer, the jurists have different opinions about it. Imam Abu Hanifah (Rh) and Imam Muhammad (Rh) say that more than thirty-nine lashes must not be awarded to anyone. Imam Abu Yusuf (Rh) says that a maximum of seventy lashes may be awarded. **(Mishkatul Masaabih).**

THE BOOK OF AL-HUDDUD[1]

[Allah's set limits and punishment for those who violate them]

CHAPTER 2. (If is permissible) to curse thieves.

2162. Narrated Abu Hurayra (R) The Prophet (Sm) said, "Allah curses a thief who steals an egg and gets his hand cut off or steals a rope and gets his hands cut off." [8:774-0. Sahih Al-Bukhari].

CHAPTER 3. Cutting of hand and what is the (minimum) theft.

2163. Narrated Ayesha (R) The Prophet (Sm) said, The hand should be cut off for stealing something that is worth a quarter of a Dinar or more." [8:780-0. Sahih Al-Bukhari]

2164. Narrated (Ayesha) (R) The hand of a thief was not cut off during the lifetime of the Prophet except for stealing something equal to a shield in value." [1] [8:783-0 Sahih Al-Bukhari]

2165. Narrated Ibn Umar (R), "Allah's Messenger cut off the hand of a thief for stealing a shield that was worth three Dirhams." [787-0. Sahih Al-Bukhari] [1] A shield was worth one Dinar at that time.

The Holy Quran is only the Law which can bring peace in the Universe."

CHAPTER 5. Stoning to death of the married people.

2217. Narrated Umar (R), "No doubt Allah sent Muhammad (Sm) with truth and revealed to him the Book (the Quran) and among that which was revealed was the Verse of Rajm (stoning the married adulterers to death)." [9:424-O. Sahih-Al-Bukhari]

[Allah's set limits and punishment for those who violates them] But no, by thy Lord, They can have no (real) faith, until they make thee judge in all disputes between them. And find In their souls no resistance against thy decisions, but accept them with the fullest conviction. (Sura Nessa or The Women). **4:65**

And remember David and Solomon, when they gave judgment in the matter of the field into which the sheep of certain people had strayed by night (Eating and destroying the crops): We did witness their judgment. **21:78**

To Solomon we inspired the (right) understanding of the matter: to each (of them) we gave Judgement and knowledge; it was our power that made the hills and the birds celebrate our praises, with David: It was we who did (all these things). (Sura Ambiya or The Prophet) (Meaning that Allah has always been capable of accomplishing whatever He wills). **21:79**

Their prayer at the House (Of Allah) is nothing but whistling and clapping of hands: (Its only answer can be), "Taste ye the penalty because ye blasphemed." (Sura Anfal or The Spoils of War.) **8:35**

PROPHET'S JUDGEMENT IN A CASE OF ADULTERY

3555. Sayyiduna Abu Hurayrah (R) and Sayyiduna Zayd ibn Khalid (R) narrated that two man brought a dispute before Allah Messenger (Sm). One of them submitted, "Judge between us in accordance with Allah's Books." The other submitted, "Yes, O Messenger of Allah, judge between us in accordance with the Book of Allah, And, permit me to speak." He said, "Speak!" So, the man said, "My son was hired labourer with this man and committed adultery with his wife I was told that my son would be stoned to death. So, I ransomed him with one

hundred sheep and my female slave. Then, I asked the scholars and they informed me that my son was liable to receive one hundred stripes and to be banished for one year (because he was an unmarried man) and that this man's wife was liable to stoning to death (being a married woman). Allah's Messenger (Sm) said, "By Him in whose hand is my soul, indeed, I shall judge between you in accordance with the Book of Allah. As for your sheep and your female slave they ought to be returned to you. Your son will be awarded one hundred lashes and will be exalted for one year (if he confesses his son, or there are four witnesses to establish the crime of fornication.)" Then he said to Unays (R). "O Unays, go to this man's wife. If she confesses, stone her to death." She did confess and he stoned her to death.

COMMENTARY: The 'Book of Allah' does not refer to the noble Quran but to the command of Allah. The reason is that the Quran does not have the command of rajm or stoning to death mentioned in it. However, it is possible that this incident had taken place when the verse of rajm had not been abrogated from the Quran for recital and the words Book of Allah in the hadith refer to the Quran itself.

Imam Shafi (Rh) contends that banishment for one year is part of hadd (prescribed punishment). He says that if an unmarried commits fornication then the punishment is one hundred stripes and being exiled for one year.

Imam Abu Hanifah (Rh) said that one year's banishment is not part of hadd (prescribed punishment) but part of exigencies at the option of the ruler.

Some others maintain that in the inception of Islam, this rule applied but was abrogated when the verse 2 of surah an-Nur was revealed:

{The adulteress and the adulterer scourge each one of the twian a hundred stripes.} (24:2)

As for the woman, she confessed and Sayyiduna Unays (R) stoned her to death. It seems that pne confession is enough for the prescribed punishment to be imposed, and Imam Shafi'I (Rh) goes by this. But, Imam Abu Hanifah (Rh) holds that it is necessary to confess four times in four sittings. He says that the confession in this hadith is the same, meaning four time. It is authentic and reliable and is clearly borne out by other ahadith.

UNMARRIED PERSON'S PUNISHMENT

3556. Sayyiduna Zayd ibn Khalid (R) narrated that he heard the Prophet (Sm) give command about an unmarried' man who commits fornication that he should be awarded one hundred lashes and be exiled for one year.

COMMENTARY: The word in the text (muhsin) is the sensible, adult Muslim who is married and had has a sexual relationship with his wife. If an unmarried man (ghayr muhsin) has illicit sex then he is punished as mentioned in this hadith: one hundred stripes and a year's banishment. The punishment of banishment has been explained previously. As for the stripes, they should not be hit on the head, face and concealed portions.

PUNISHMENT AWARDED TO MARRIED PERSON

3557. Sayyiduna Umar (R) narrated: "Surely Allah sent Muhammad with the truth and revealed to him the Book, and among that which Allah, the Exalted, revealed is the verse of rajm (stoning). So, Allah's Messenger (Sm) had the adulterers stoned to death and, after him, we have stoned them to death. And, stoning to death is established as a duty in Allah's Book,

for married men and women, who perpetrate adultery once it is proved, or here is pregnancy, or a confession.”

COMMENTARY: The previous hadith mentioned the punishment imposed on an unmarried adulterer or adulteress. This hadith mentions the punishment a married man or woman faces when they commit adultery. Here again the word muhsin is used and it has been explained previously.

The verse of stoning to death was found in the Quran but subsequently abrogated for recital. The words have been removed but the command is retained. The verse was:

The hadith concludes with the enumeration of three things as essential to establish that adultery is committed. They are:

- (1) Witnesses,
- (2) Pregnancy, and
- (3) Confession.

Pregnancy is proof of illicit sex against an unmarried woman, but this command, too, has been rescinded. The requirement of testimony and confession stands. A married person who engages in illicit sexual intercourse will be stoned to death only when the crime is proved through witnesses or confession of the perpetrator.

ADULTERERS MUST BE STONED TO DEATH

3558. Sayyiduna Ubadah ibn Samit (R) narrated that the Prophet (Sm) said, “Take from me (the command)! Take from me (the command)! Allah has appointed for those women a way! When unmarried people commit adultery, they should be awarded one hundred stripes and banished for one year. When married people commit adultery they should be awarded one hundred stripes and be stoned to death.”

COMMENTARY: This hadith actually explains the verse (4:15); (or Allah prescribes for them a way)

Allamah Turpushti (Rh) said that the Prophet (Sm) made this declaration when hadd (prescribed punishment) was prescribed for the (married) adulterer and adulteress. Hence, 'a way' means the hadd (prescribed punishment) that was not prescribed before that, but the command was valid that is prescribed in this verse:

{As for those of your women who commit indecency, call against them four witness from among you, then if they testify, confine them to (their) houses until death takes them or Allah appoints for them a way} (4:15)

In short, if woman commit illicit sex and their sin is proved through witnesses, then they should be confined to their houses till they die, or Allah causes them to have a way, meaning, the hadd (prescribed punishment). Hence, when Allah revealed the command of hadd (prescribed punishment), the Prophet (Sm) said, "Allah has appointed a way for women," meaning the hadd (prescribed punishment). Then, he explained what hadd (prescribed punishment) is.

This hadith prescribes for a married man who commits indecency one hundred stripes and stoning to death. The zawahir and some of the sahabah (Prophet's Companions) (Sm), and tabi'un abided by it, but the majority of the scholars say that if an adulterer or adultererss deserves to be stoned to death then the punishment of one hundred lashes is redundant. He will be stoned to death and the other punishments are superfluous. It is reported that one man Ma'iz had indulged in illicit sex in spite of being married. The prophet (Sm) did not award him the stripes but only stoned him to death. The same

thing is known from the hadith about Ghamidiyah, which we shall read, and the hadith of Unays (R) (#3555).

3559. Sayyiduna Abdullah ibn Umar (R) narrated that some Jews came to Allah's Messenger (Sm) and stated that one of their (married) man and (married) woman had committed adultery. He asked them what the Torah said about stoning to death and they said that they ought to disgrace them and to give them stripes. But, Abdullah ibn Salaam (R) (who was there) interjected, "You lie. It says that they should be stoned to death. Bring the Torah." (I shall show you the command.) They (brought it and) placed it open. One of them put his hand on the verse of rajm and recited what preceded it and what followed it. Abdullah ibn Salaam (R) instructed him to lift his hand from there. He did so and the verse of stoning was disclosed. They said, "O Muhammad, he has spoken the truth. The verse of stoning is there in it." Then, the prophet (Sm) commended (accordingly) about both of them. They were stoned to death. According to another version: He (Abdullah ibn Salaam) (R) said to the man, "Remove your hand." So he lifted it up and as he did so, the verse of rajm was clearly (disclosed) in it. The man then conceded, "O Muhammad, there is the verse of stoning in it, but we have been keep it undisclosed among ourselves." He then gave orders about them (that they should be stoned to death) and they were stoned to death.

COMMENTARY: Abdullah ibn Salaam (R) was a Jew previously but when Allah guided him, he become a Muslim. He was a front ranking scholar among the Jews. He had abundant knowledge of the Torah.

The Jew who had put his hand on the verse of rajm in the Torah was Abdullah ibn Suriya. The punishment of rajm is awarded to married adulterers who are Muslim. Here, they were not Muslims, but the punishment was awarded to them according

to their Book, the Torah, which also did not make it binding for it to be awarded only to married people. The Prophet (Sm) began to follow the Quran when the command was revealed in it and the command of the Torah was abrogated.

Moreover, Imam Shafi' I (Rh) does not apply the word muhsin (married) only to Muslims. Any married man, Muslim or not Muslim, is liable to rajm if he commits fornication. Imam Abu Yusuf (Rh) also says the same thing. He is among the Hanafis.

One should not doubt that the Prophet (Sm) merely relied on the testimony of the Jews which is not worth while. It is not necessary that he did not have the confession of the accused for, he may have had the testimony of four Muslim too.

The book Mirqat of Mulla Ali Qari (Rh) may be seen. Here, we have merely presented a synopsis from it.

RAJM FOR WHO CONFESSED TO INDECENCY

3560. Sayyiduna Abu Hurayrah (R) narrated that a man came to the Prophet (Sm) when he was in the mosque (Masjid Nabawi). He called, "O Messenger of Allah, I have committed fornication. The Prophet (Sm) turned (his face) away from him. He came to where he had turned his face and standing opposite to him, repeated, "I have committed fornication." The Prophet (Sm) turned away from him. When he testified (against himself) four times, the Prophet (Sm) called him (closer) and asked him, "Are you mad?" He said, "No!" He asked, "Are you married?" He said, "Yes, O Messenger of Allah," He said, "Take him away and stone him to death."

Ibn Shihab (Rh) (a sub narrator) said that he who had heard from Jabir (R) ibn Abdullah (R) said that he said, "We stoned him in Madinah. As the stones hurt him, he run away. But, we caught up with him in the harrah and stoned him to death."

According to another version in Bukhari (Rh), Jabir (R) said that after his saying, "Yes!" the prophet (Sm) ordered that he should be stoned to death. He was stoned at al-musallla (the place of salah (prayer) of Eed). When the stones struck him he fled, but he was nabbed and stoned to death. The Prophet (Sm) prescribed him highly and offered his funeral salah (prayer). (Or, the words mean that he prayed for him).

COMMENTARY: The man confessed four times, each time from a different direction. In other words, they were four testimonies in four different sittings. Imam Abu Hanifah (Rh) has deduced from it that for adultery to be established, the accused must make four confessions in four sittings. This according to him, is a condition.

The Prophet (Sm) asked him whether he was mad. He meant that to sane person would pave a way for his own stoning to death. He should have, rather, made a repentance to Allah and sought His forgiveness, and made a resolve never to commit sin again. Nawawi (R) said that the Prophet (Sm) intended to make it certain because generally no one so readily confesses to his sins and no one insists on that knowing that the punishment for it is death. Rather, a person finds it safe to get deliverance through repentance and have his sins forgiven.

It also shows that legal avenues must not be left unexplored to allow benefit of doubt to every Muslim. If a Muslim's life may be saved lawfully, then that must be done. Further, if a mad man says that he has committed adultery then he must not be believed. Also, he must not be exposed to hadd (prescribed punishment).

Imam Nawawi (Rh) also said that the ruler must also investigate if all the conditions are fulfilled before imposing the hadd (prescribed punishment), for example, the accused must be a

married person to be subject to hadd (prescribed punishment). It is the same if he makes a confession himself or witnesses testify against him. It may be presumed from the Prophet (Sm) words that if such a person retracts his confession then he must be forgiven and the hadd (prescribed punishment) for adultery must be withdrawn.

Ibn Hammam (Rh) said that when a man is stoned to death, he must be made to stand and face the stoning. He must not be made to hang on something or be suspended in the air. A woman who is stoned must be made to sit down and it is better if she is made to stand in a ditch and buried up to her chest so that her body is not bared. The Prophet (Sm) had a ditch dug for ghamidiyh.

The ruling is that if a person who is being stoned to death runs away during the stoning then this person must not be chased if it is a punishment on voluntary confession. If the indecency is established through witnesses then the person must be chased and stoned to death. Nawawi (Rh) said about being stoned at al-Musalla that it was the place where funeral salah (prayer) used to be offered (not eed as in the text). This is corroborated by another version. Bukhari (Rh) and others say that if the place where the funeral salah (prayer) is offered or the eed salah (prayer) is offered is not designated as a mosque, then it will not come under the purview of rules applicable to mosques. However, generally the place where funeral salah (prayer) or eed salah (prayer) is offered attracts the same commands as apply to mosques. This means that blood must not be shed there, and it should be sanctified. Hence, the fornicator must not be stoned to death at these places meaning mosques.

HADD (PRESCRIBED PUNISHMENT) & TA'ZEER MUST NOT BE IMPOSED IN MOSQUES: Ibn Hammam (Rh) said that neither hadd (prescribed punishment) nor ta'zeer must be

enforced on any one in the mosques. All the ulama (Scholars) are unanimous about it. It is based on the saying of the Prophet (Sm).

[Preserve your mosques from your children, your madmen, raising of your voices. Your trading (buying and selling) and enforcing your hudud. On Friday, let there be incense in your mosques and make places of ablution at their gates.]

DO NOT PUNISH BEFORE PROBING

3561. Sayyiduna Ibn Abbas (R) narrated that when (Sayyiduna) Ma'iz Ibn Maalik (R) came to the Prophet (Sm) (and submitted, "I have committed adultery,") he asked, "Perhaps, you merely kissed (her), or touched (her) with sexual intent, or looked (at her)?" But, he submitted, "No, O Messenger of Allah!" So, he asked, "Did you have sexual intercourse with her?" He asked this question directly not by allusion. He confirmed, "Yes!" At that, he commended that he (Ma'iz) should be stoned to death.

SIN IS CEASED AFTER RECEIVING PRESCRIBED PUNISHMENT

3562. Sayyiduna Buraydah (R) narrated (Sayyiduna) Ma'iz Ibn Maalik (R) came to the Prophet (Sm) and submitted, "O Messenger of Allah, purify me!" (He meant that he should be punished in order to have his sin erased.) He said, "How Sad! Go away! Seek Allah's forgiveness and repent to Him!"

He narrated further that he went away but not far and came back only to repeat, "O Messenger of Allah, purify me!" The prophet (Sm) said (to him) like what he had said before, till when it happened (like that) the fourth time, Allah's Messenger (Sm). said to him, "Of what shall I purify you?" He submitted, "Of adultery." (by imposing hadd (prescribed punishment)

over me). Allah's Messenger (Sm) asked (his sahabah) (R) "Is he mad?" He was told, "He is not insane." He asked, "Has he drunk wine?" A man got up and sniffed at his breath but perceived not the smell of wine.

So, he asked, him, "Have you committed adultery. He said, "Yes!" So, he gave a command about him and he was stoned to death.

After two or three days, Allah's Messenger (Sm) came and said, "Seek forgiveness for Ma'iz Ibn Maalik (R). He has made so much repentance that if it were divide among an ummah, it would suffice them all."

Later, a woman of Ghamid of the tribe Azd came to him and submitted, "O Allah's Messenger, purify me." He said, 'Pity on you! Go back and seek Allah's forgiveness and repent to him.'" She asked, "would you like to send me back as you did send back Ma'iz Ibn Maalik (R) (while I am) a woman who is pregnant through adultery?" (There is no possibility of a denial any more) He asked, "You?" She Said, "Yes!" He said to her, "wait till you give birth to what you carry in your womb." The narrator went on: An Ansar took responsibility for her till she had given birth to a child. Then, he went to the prophet (Sm) and informed him that the woman of Ghamid had delivered a child. He said, "We shall not stone her and so leave her child without any one to suckle it." Thereupon another of the Ansar got up and submitted, "O Prophet of Allah. I take responsibility for the child's suckling."

The narrator added: He had her stoned to death.

According to another version: He instructed her to go and wait till she gave birth to the child when she did (and came to him), he instructed her to go and suckle the child and wait till she had weaned it. When she had done that, she came with the

child holding a slice of bread in its hand and she submitted, "I have weaned this child, O Prophet of Allah, and he has eaten food." He handed over the child to one of the Muslims. He gave an order about her and she was put in a pit up to her chest. Then he instructed the people (to stone her) and they stoned her. Khalid ibn walid (R) stepped forward with a stone that he flung at her head. Blood from it flew on his face, so he cursed her the Prophet (Sm) said, "Be calm, O Khalid! By Him in whose hand is my soul! She has repented so much that if he who charges an unjust tax repents in like manner then he would be forgiven." Then he gave an order about her and the funeral salah (prayer) was offered over her. Then she was buried. (the passive voice is as per the urdu translation.)

COMMENTARY: Certainly, the repentant of Ma'iz (R) was such that the prophet (Sm) spoke highly of his good fortune and excellence. It brought a forgiveness and mercy that covered a very large sanction of Allah's creation.

The enforcement of hadd (prescribed punishment) is called tawbah (repentance) because like repentance, it also washes off all sins.

Ibn Maalik (Rh) deduces from the hadith that a pregnant woman should not be awarded the hadd (prescribed punishment) till she gives birth to her child. In this way an innocent life will not be taken away. She should also be given respite till her child is weaned and is no more dependant on her if there is someone to look after the child. This is also the contention of Imam Abu Hanifah (Rh).

The hadith is evidence that to charge unjust tax and other levies are very sinful. It is like snatching someone's property.

The word at the end of the hadith is *salla* (he offered *salati* (prayer) - in *sahih Muslim* from all the narrators. This means

that the Prophet (Sm) offered the funeral salah (prayer) over the woman. However, in the view of Tabari and in the versions of Ibn Abu Shayban and Abu Dawud the word is *sulli* - in the passive voice) to imply that while the others offered the funeral salah (prayer), Allah's Messenger (Sm) did not offer it. Indeed, the version of Abu Dawud states very clearly that he did not offer it but instructed the people to offer it. This is why the imams differ on whether funeral salah (prayer) is offered over one who is stoned. Imam Maalik (Rh) regards it to be *makruh* (disapproved).

Imam Ahmad (Rh) says that the ruler and dignitaries must not offer it but the common people may offer the funeral salah (prayer) over such a person.

Imam shafi'I (Rh) and Imam Abu Hanifah (Rh) hold this person's funeral salah (prayer) should be offered as, in fact, of every such person who recites the *kalimah*, even if he was a sinner and indecent, and the *hadd* (prescribed punishment) was enforced on him. According to another report, Imam Ahmad (Rh) also gave the same opinion. Qadi Iyad (Rh) also outlined the two forms of the word *salla* and *sulli* (active and passive voice) in different books. He says that it is more proper that the word is in the active voice *salla*, If read with the preceding (then he gave a command concerning her). This means that he instructed them to give her body a bath and to enshroud it and to bring it to the place of the funeral salah (prayer). This is upheld by the words in *sahih Muslim* (# 64.1696):

{...then the Prophet pronounced judgment about her and her clothes were tied around her and he commanded and she was stoned to death. He then offered the funeral salah (prayer) over her. Umar (R) A-M- submitted to him, "O Prophet of Allah you offer salah (prayer) over her while she had committed fornication..."}

It is stated explicitly in this hadith that the prophet (Sm) did offer the funeral salah (prayer) of this woman.

Qadi Iyad has made it clear too that though Muslim has not mentioned the Prophet's (Sm) offering the funeral salah (prayer) over Ma'iz ibn Maalik (R) Bukhari has mentioned it. The Question arises that since most of the versions of Muslim has the active voice of the word (salla), why do the authentic copies of Mishkat use the passive voice of this word (sulli)? He (the compiler) ought to have preferred the active voice because the positive is always chosen over the negative. But, since some reliable texts had the passive voice and there was a difference of opinion whether the funeral salah (prayer) was offered by the Prophet (Sm) or not, the compiler of mishkat opted for the passive voice because it allows for both options. But, we must go by the majority and use the active voice to state that:

{The prophet (Sm) did offer the funeral salah (prayer) over her.}

DEDUCTION: This hadith proves that hadd (prescribed punishment) (prescribed punishment) wipes out the sin for which it is imposed. In the hereafter t his person who is punished will not be questioned about the sin for which he is punished.

APPARENT DIFFERENCE: Finally, Nawawi (Rh) has pointed out that of the two versions, the second makes it very clear that the woman had weaned the child before she was stoned to death. However, the first implies that she was punished when the Ansar man offered to shoulder responsibility for the suckling of the child. This may be explained by suggesting that even in the first version, it does not specify that the child was not weaned. The responsibility that the Ansar had taken to suckle the child was a figurative way of caring for it, because

the child was an infant after all. He took responsibility to raise and nurture the child.

PUNISHMENT GIVEN TO INDECENT SLAVE GIRL

3563. Sayyiduna Abu Hurayrah (R) narrated that he heard the Prophet (Sm) say, “when the female slave of any of you commits adultery and it is obvious (that she had done so), he must impose the had (prescribed punishment) on her of flogging. But, he must not disgrace her. When she commits adultery again, he must impose the hadd (prescribed punishment) on her of flogging. But, he must not disgrace her. Then, when she commits adultery a third time and it is obvious (that she has done so), he must sell her, even if only for a string of hair (meaning, the most insignificant thing).

COMMENTARY: The hadd (prescribed punishment) that the master must impose on his earning female slave is to give her fifty stripes. The hadd (prescribed punishment) of male and female slave is half of that of free man. Moreover stoning to death is not prescribed for them.

Imam Shafi (Rh) says on the basis of this hadith that a master may carry on and execute the hadd (prescribed punishment) himself.

The Hanafis, however, say that this is not allowed. They say that the hadith makes him responsible to present her to the ruler that he might impose the hadd (prescribed punishment). Once the female slave is awarded the punishment, she must not be taunted and disgraced. The hadd (prescribed punishment) wipes off her sins. This command is not only for female slave but also for the free woman, etc. since female slave are generally prone insults on sight faults, therefore this hadith mentions them particularly.

As for selling his erring female slave, he may sell her after imposing the hadd (prescribed punishment) on her, or without imposing it. However, the words of the hadith seem to suggest that he should dispose of her before imposing on her the hadd (prescribed punishment). Imam Nawawi (Rh) points out that the hadith discourage living with sinners and indecent people.” He said that it is mustahab (desirable) to sell a female slave to this nature, but the Zawahir scholars say that it is wajib (obligatory) to part with her.

ABOUT THE HADD (PRESCRIBED PUNISHMENT) ON THE SICK

3564. Sayyiduna Ali (R) said, “O you people! Do enforce the hadd (prescribed punishment) on your (male and female) slaves (if they perpetrate adultery or fornication, fifty stripes), the married among them or the unmarried. Indeed, a female slave belonging to Allah’s Messenger (Sm) had committed fornication. So, he commanded me to impose the hadd (prescribed punishment) (of lashes) on her. But, behold! She had given birth to a child recently. That caused me apprehension that if I whipped her then I might kill her Hence. I spoke of that with the noble prophet (Sm) and he agreed, saying. “You did well!” According to another version: He said, “Let her alone till her blood stops to flow. Then impose the hadd (prescribed punishment) on her. And impose the prescribed punishment on your slave (male and female).”

COMMENTARY: According to this hadith a woman experiencing post-birth bleeding must be given respite from punishment till she stop bleeding. This is a kind of sickness and a sick person is not punished till he recovers.

Ibn Hamam (R) says that if a sick married person has committed fornication and is liable to stoning to death then he should be

given that punishment during his sickness. If he is unmarried and has committed adultery and is liable to be lashed then he should not be awarded the lashes is his sickness but the punishment should be deferred till he recovers. However, if he suffers such an illness from which he might not recover or is infirm and feeble, then Imam Abu Hanifah (Rh) and Imam Shafi'I (Rh) say that the punishment must be carried out to fulfil the requirements of law by getting a branch of the date palm tree that has one hundred small twigs. He should be hit with that branch once in such a way that each of its one hundred twigs touches his body. It is necessary to use a wide, stretched out branch.

Moreover, the flogging should not be carried out in severe summer or in harsh winter. It should be enforced in a moderate climate (see hadith # 3574 about a sick punishment).

ADULTERER (LESS) RETRACTS CONFESSION

3565. Sayyiduna Abu Hurayrah (R) in narrated: Ma'iz Aslami (R) came to Allah's Messenger (Sm) and submitted that he had commit adultery, but he turned away from him. He came over to the other side and submitted, "I have committed adultery." But he turned away from him. He came over again and submitted. "O Messenger of Allah, I have committed adultery." When he repeated it the fourth time, he gave an order about him and he was taken to Harrah and was being stoned, when he felt the pair the stones caused, he fled till he come to a man who had the jawbone of a camel (in his hand). He struck him with it and (other) people (also resumed to) hit him till he died. They reported that to Allah's Messenger (Sm) saying, "He fled on feeling the pain of the stones and the sense of death." He said, "Why did you not spare him?"

According to another version: He said, “why did you not spare him? He might have made a repentance and gained pardon from Allah.”

COMMENTARY: The final words mean that he could have repented and Allah would have relented to him.

According to this hadith if any one confesses having committed a sin but retracts his confession or says that he had lied or says that he takes back his confession, then the prescribed punishment of hadd (prescribed punishment) will become invalid. If he does the same thing while he is being punished then the remaining portion of the punishment will be waived. Some authorities say, however, that hadd (prescribed punishment) will not be waived nor become invalid.

CONFESSION OF MA'IZ (R)

3566. Sayyiduna Ibn Abbas (R) narrated that the Prophet (Sm) asked (Sayyiduna) Ma'iz Ibn Maalik (R) “Is what is conveyed to me about you true? He asked, “And what has been conveyed to you about me?” He said, It has been conveyed to me that you have had sexual intercourse with the slave girl belonging to so and so people.” He said, “Yes” and he admitted it four times (in four meetings) so, he ordered that he should be stoned to death. And he was stoned to death.

COMMENTARY: The compiler of the Masabih has placed this hadith here in Section II though it ought to have been placed in Section I.

There is no contradiction between this hadith and the previous ahadith on this subject. Here, the main subject is mentioned briefly and the initial confession of Ma'iz (R) is not mentioned. It is very much likely that the prophet (Sm) had known of Ma'iz' (R) guilt beforehand and had him admit it in the manner

mentioned in the other ahadith (# 3561, 3562, 3565). He had him do that four times in four positions.

CONCEAL FAULTS OF OTHER PEOPLE

3567. Sayyiduna Yazid ibn Nu'aym (Rh) reported on the authority of his father, that Ma'iz (R) came to the prophet (Sm) and confessed before him four times (in four positions to having perpetrated illicit sexual intercourse). So he ordered that he should be stoned to death. (That was done) And he said to Hazzal (R) "Had you covered him with our garment, that would have been better for you." (meaning, if you had concealed his sin of extra marital sex).

Ibn Munkadir 3 (a narrator of this hadith) said that it was Sayyidah Hazzal (R) who had induced Ma'iz (R) to go to the Prophet (Sm) and disclose to him what he had perpetrated.

COMMENTARY: Sayyiduna Hazzal (R) had a female slave by the name of Fatimah (R) whom he had set free. Mu'iz (R) had illicit sex with Fatimah (R). When Hazzal (R) learnt of it, he induced Ma'iz (R) to disclose his affair to the Prophet (Sm). This is the reason the prophet (Sm) advised Hazzal (R) that it would have been better for him not to disclose the sin of Ma'iz (R). "Allah would have concealed your faults." (In this regard the hadith of Ibn Umar (R) may be borne in mind: "A Muslim is a brother of another Muslim... and whoever conceals (faults of) a Muslim, Allah will conceal (his faults for) him on the day of resurrection.")

NO RULER MAY CONDONE THE PRESCRIBED PUNISHMENT

3568. Sayyiduna Amr ibn Shu'ayb (Rh) reported from his father, Shuayb (Rh) that his grandfather, Abdullah ibn Amr ibn

Aas (R) narrated that Allah's Messenger (Sm) said "Forgive the enforcement of the prescribed punishment amongst yourselves (before I learn of them). If I learn of any crime calling for the prescribed punishment then it become wajib (obligatory) (to enforce it)."

COMMENTARY: The people are advised to forgive each other and avert their punishment.

They are urged to be kind and not to bring cases against each other before rulers. Once it comes to the ruler then it is not allowed to him to forgive the accused and he must enforce the punishment.

The master of a slave may not enforce the hadd (prescribed punishment) on his slave himself nor is it proper for him to bring him to the ruler. Rather, he must forgive him. Moreover, the advice to forgive is not a command of a wajib (obligatory) nature but is a *trustahab* (desirable) (recommended) course.

OVERLOOK THE MISTAKES OF THE RESPECTABLE

3569. Sayyiduna Ayshah (R) narrated that the Prophet (Sm) said, "Overlook the mistake of the people of distinction, but not such acts as invite the prescribed punishment (on them)."

COMMENTARY: If they commit a sin by mistake or fall into an error suddenly an unexpectedly then they must be forgiven. They should not be disgraced by subjecting them to punishment whether their slip or sin concerns rights of Allah or rights of fellow men. Of course, it is not allowed to forgive them such sins as make them liable to the hadd (prescribed punishment), whether they concern rights of Allah or rights of human beings. This command is directed to all people. Moreover, it is of the nature of *mustahab* (desirable).

BENEFIT OF DOUBT BE GIVEN TO THE ACCUSED

3570. Sayyidah Ayshah (R) narrated that Allah’s Messenger (Sm) said, “As for as you possibly can, preserve the Muslims from the imposition of the prescribed punishment. If there is any possibility of escape for a person then let him go, for it is better for a ruler or judge to err in forgiving than to err in punishing.”

COMMENTARY: These words are addressed primarily to the rulers. They should give benefit of doubt to the accused and to their best to ward off the punishment from him. In fact, they must encourage the accused to present an excuse, like asking him if he is mad. Examples are found in the case of Ma’iz (R) whom the prophet (Sm) prompted a number of possibilities.

As for a ruler or judge making a mistake, this does impair the judgement. However, if the mistake is in favour of the accused then a Muslim’s life is saved and his honour protected. Hence this mistake is better than committing one which plays with his life.

HADD (PRESCRIBED PUNISHMENT) IS IMPOSED ON MAN WHO RAPES

3571. Sayyiduna Wa’il ibn Hujr (R) narrated that, in the time of Prophet (Sm), a woman was compelled (to submit to a man’s evil desire against her will. He solved her of punishment, but imposed the hadd (prescribed punishment) on the man who had raped her. The narrator did not say any thing about whether the Prophet (Sm) made a dower payable to the woman (by the man).

COMMENTARY: If the narrator did not mention it, it does not fellow that a dower was not paid. Other ahadith do confirm that it is wajib (obligatory) to pay the mahr (dower) to women

who are forced to submit to a man's evil desire against her will. The word mahr is actually used uqr which is a penalty payable to a woman who is subjected to illicit sexual intercourse. The amount is calculated according to what dower would have been wajib (obligatory) in a lawful relationship of marriage.

It is stated in fatawa Alamgiri that uqr is mahr mithl (proper dower). In other words, the rapist must be made to pay to the woman the amount equal to the dower proper to her status.

3572. Sayyiduna Wa'il ibn Hujr (R) narrated that, in the time of the Prophet (Sm) a woman went out to go and offer the salah (prayer). On the way, a man met her and putting a sheet of cloth over her, (molested her and) had his desire fulfilled with her. She shouted and he fled. A group of the mujahirs passed by. She told them that the man had done wrong to her. They got hold of him and took him to Allah's Messenger (Sm) who instructed the woman to go away, "Allah has forgiven you." And, he said about the man who had raped her. "Stone him to death.' Then he said, "He has repented so much (by enduring the hadd (prescribed punishment)) that if the inhabitants of Madinah had repented in this way, their repentance would have been accepted from them."

COMMENTARY: The concluding words mean that the man endured punishment for his crime and thereby made a repentance. If that repentance was shared by the people of Madinah then not only would their repentance have been accepted but also its reward would have sufficed all of them. The prophet (Sm) made clear through these words that the man had committed a heinous crime but the punishment had purified him of his sin and he was forgiven.

DUAL PUNISHMENT

3573. Sayyiduna Jabir (R) narrated that a man had illicit sexual intercourse with a woman, so the prophet (Sm) gave command about him. He was awarded stripes. Later, he was told that the man was married, so he gave command and the man was stoned to death.

COMMENTARY: This hadith shows that a ruler must amend his command when he learns that a culprit has been given a lighter punishment instead of what he ought to have been given.

HADD (PRESCRIBED PUNISHMENT) ON A SICK CULPRIT

3574. Sayyiduna Sa'eed ibn Sa'd (R) ibn Ubadah (R) reported that Sa'd ibn Ubadah (R) took to the Prophet (Sm) from his neighbourhood an incompletely built, sick man (having no hopes of recovery). He was found having illicit sexual intercourse with a female slave of the neighbourhood. The Prophet (Sm) said, "Get for him a branch of a palm tree that has one hundred twigs. Then strike him with the branch once."

The Majahj has transmitted a similar hadith.

COMMENTARY: The prophet (Sm) said that the man should be struck once with the branch. The strike was to be such as to cause every thing to hit his person. Previously, we have touched on this subject (hadith # 3564)

The ruler is bound to consider all aspects of the case when he passes the judgement.

HOMOSEXUALITY

3575. Sayyiduna Ikrima reported from (Sayyiduna) Ibn Abbas (R) that Allah's Messenger (Sm) said, "If you see anyone do the deed done by the people of Lut (AS) then kill the doer and the one to whom it is done."

COMMENTARY: It is stated in sharh us sunnah (Prophet's (Sm) practice) that the ulama (Scholars) differ on the issue of hadd (prescribed punishment) enforced on a homosexual.

Imam Shafi'I (Rh) gave two verdicts. His stronger verdict, and the verdicts of Imam Abu Yusuf (Rh) and Imam Muhammad (Rh) is that the hadd (prescribed punishment) of the doer is that of the fornicator or adulterer. If he is married then he should be stoned to death. If he is not married then he should be given one hundred stripes and banished for one year. The same punishment applies to a lesbian.

Others say that the doer must be stoned to death in any case, married or unmarried. Imam Malik (Rh) and Imam Ahmad (Rh) hold the same opinion.

The second verdict of Imam Shafi'I (Rh) is that both the doer and one who get it done should be killed. This is as the obvious meaning of this hadith.

As for how they should be killed, some authorities say that they must be crushed under a falling house to die under its debris. Others say that they must be crushed under a falling house to die under its debris. Others say that they must be thrown down from a mountain peak. Imam Abu Hanifah (Rh) said that their punishment should be at the ruler's discretion. If it has become their habit, then he may, if he wishes, kill them. He may beat them or he may imprison them.

COMMITTING UNNATURAL ACT WITH ANIMALS

3576. Sayyiduna Ibn Abbas (R) narrated that Allah's Messenger said, "If any one has sexual intercourse with an animal, kill him and kill the animal with him." Ibn Abbas (R) was asked, 'what wrong does the animal do?' He said, 'I had heard nothing about it from Allah's Messenger (Sm). I suppose that he did not like that its flesh may be eaten or any benefit be derived from it once this act is done to it."

COMMENTARY: The words of the hadith 'kill him' do not mean that he should be killed in fact. Rather, he must be thrashed severely.

As for killing the animal, some people imagine that if the animal is spared, it might conceive from the man's sperm and a deformed animal might be born having some human features. So, to avert that, the animal must be put to death. Or, the living animal might cause embracement to its owner before other people.

It is stated in Sharh Mazhar that the four imams agree that the savage, sadistic man who has perpetrated an unnatural act with an animal must not be killed, but he must be awarded some discretionary punishment. As for this hadith, it strongly condemns the brutal act of the sadistic man.

Where the animal is concerned, some scholars hold that an animal whose flesh is eaten and has been subjected to the unnatural act. Must be killed. If its meat is not eaten, then both options are open. We abide by the apparent meaning of this hadith, then it may be killed, If it is not the desire to eat its flesh and it is not lawful then it is forbidden to slaughter it and hence it must not be killed.

HOMOSEXUALITY IS WORST KIND OF SIN

3577. Sayyiduna Jabir (R) narrated that Allah's Messenger (Sm) said, "That which I fear most for my ummah is that they might do what the people of Lut (AS) did."

COMMENTARY: He feared that his people might succumb to sexual desires and become agitated. Because of that, they might began to do the unnatural act. This is a very dirty and greatly unlawful deed. If they do it, then they will face a very grave punishment.

SEPARATE PUNISHMENT FOR ADULTERY AND FOR FALSE ACCUSATION

3578. Sayyiduna Ibn Abbas (R) narrated that a man of Banu Bakr ibn Layth came to the Prophet (Sm) and asserted that he had committed adultery with a woman four times.

So, he awarded one hundred lashes to him because he was unmarried. Then he asked him to bring witnesses against the woman, but she declared, "He lies, by Allah. O Messenger of Allah." So, he had him get the hadd (prescribed punishment) (prescribed lashes) for falsehood.

COMMENTARY: The man was punished on the basis of his own confession that he had committed adultery. But, he also accused a woman with whom he claimed to have had sexual intercourse. So, the Prophet (Sm) asked him to produce witnesses against her. He could not do that, so the woman took oath that he was a liar. She established in that way that he had accused her falsely. Hence, the Prophet (Sm) ordered that he should be given eighty lashes for calumny.

PUNISHMENT TO THOSE WHO CAST SLANDER ON SAYYIDAH AYSHAH (R)

3579. Sayyidah Ayshah (R) narrated: when my acquittal was revealed (through verses of the Quran establishing my innocence) the Prophet (Sm) M ascended the pulpit and mentioned that (in a sermon). When he came down from the pulpit, he gave command about the two men and the woman. So, they were awarded the hadd (prescribed punishment) (for calumny).

COMMENTARY: Some people had accused Sayyidah Ayshah (R) of committing fornication (we seek refuge in Allah from such thought). In fact, the Prophet (Sm) had also begun to have some doubts. But, Allah revealed verses exonerating her. This proved that the accusations were part of a conspiracy to malign her, and some people were involved in it. Her innocence was established in the verses of surah an-Nur. The Prophet (Sm) declared that from the pulpit, and, on alighting from it, he passed judgement against the slanders the hadd (prescribed punishment) qadhaf which is eighty stripes. The conspirators included two men, Mistah (R) and Hassan ibn Thabit (R) and one woman, Hammah bint Jahsh who was the most mischievous of all. Each of them was given eighty stripes.

Here we reproduce hadith (# 3191) from Tirmidhi concerning the enter case of ifk (Slander). Sayyidah Ayshah (R) narrated: when whatever was said about me and I was unaware of it, Allah's Messenger (Sm) got up to address the people about me. He began with the tashahhud (testimony of Allah's unity and of the messenger ship). He praised Allah and glorified Him as He is worthy of it. He then said, "To proceed: Give me advice about those people who slander my wife. By Allah, I do not know of any evil in my wife, not at all! And they accuse her of being with a man of whom I know no evil, not at all he never

enters my house except when I am there. He never undertook a journey except with me." Sa'd ibn Mu'adh stood up and said, "Permit me, O Messenger of Allah that I may sever their necks." A man from the Khazraj also got up the mother of Hassan ibn Thabit was of the same tribe as this man-and he said, "You lie. By Allah, if those people were from the Aws, you would not have loved to strike at their necks." This went to far that there nearly was evil between Aws and Khazraj in the mosque. But I did not know of it. When it was evening of that day, I went out to attend to one of my needs with Umm Mistah. She stumbled and exclaimed, "May Mistah perish." I said to her, "O Mother, do you revile your son?" But she did not say anything. She stumbled a second time and said, "May Mistah be ruined." I said to her, "O Mother, do you revile your son?" She did not answer. Again, she stumbled the third time and said, "May Mistah perish!" So, I rebuked her for that, saying, "O Mother, you revile your son?" She said, "By Allah, I do not revile him except for your sake." I asked her, "What about me?" She narrated the hadith (account of what had transpired). I asked "And is that really so?" She confirmed that it was so, I returned home not at all being pressed to follow that for which I had gone out. I fell ill and the said to Allah's Messenger, (Sm), "send me to the house of my father." He sent me there and sent a slave with me. I entered the house and found Umm Ruman (my mother) downstairs and Abu Bakr upstairs reciting (the Qu'ran). She asked me "what is with you, O daughter?" I informed her, relating the entire account but she was not as hurt by it as I was. said to me, "O my daughter, do not take it too hard. It is always that a beautiful woman who is loved by her husband and she had co-wives will find jealousy surrounding her. Her faults are picked." But she was not as hurt about it as I was. I asked her if my father know about it. She said, "Yes." I was more grieved at that and wept

loudly. Abu Bakr heard my voice. He was upstairs reciting the Quran. He came down and asked my mother how it was with me. She told him that I had learnt of the matter. Tears came to his daughter, go back to your home." So, I went back eyes. He said, "I adjure you, O home. Allah's Messenger (Sm) had already come home and asked my maidservant about me she said, "By Allah, I do not know to any defect in her except that she goes to sleep and the sheep enter the house devouring her flour or her dough." Some of the Prophet's (Sm) sahabah scolded her, saying, "Speak the truth before Allah's Messenger (Sm)." they were rude to her and she said, "Subhan Allah. By Allah, I know about her as a jeweller knows pure gold." When that man of whom the accusation was made learnt of this, he said, "Subhan Allah! I have never seen a woman's satr (private parts) (concealed body)." He was then martyred in Allah's cause (in a battle). In the morning my parents came to me. They remained with me till Allah's Messenger (Sm) came, having offered the salah (prayer) of asr. He came in and my parents were sitting on either side of me. The Prophet (Sm) recited the tashahhud, glorified Allah in words worthy of Him. Then he said, "Amman ba'd (to proceed), O Ayshah! If you have committed an evil deed or wronged (yourself) then repent to Allah, for, indeed Allah accepts repentance from His slaves." Meanwhile, an Ansar woman came and sat down by the door. I said (to him), "Do you not feel shy to speak so in the presence of this woman?" And he did deliver words of advice and admonition. I turned to my father and requested him to answer him, but he said, "What may I say?" Then I turned to my mother and asked her to say something, but she said, "Say what?" When they gave no reply, I recited the tashahhud, praised Allah and glorified Him with words worthy to Him. Then I said, "Now, if I were to tell you that I have done no such thing and Allah is witness that I am truthful that would be of

no avail to me before you because you have spoken about it and your hearts have already accepted that. But if I say that I have done it, and Allah knows that I have not done it, you would say surely that I have confessed to the crime. By Allah, I do not find an example for myself and for you,” and I intended to take the name of Ya’qub but could not recall it except Abu Yusuf (Rh) (father of Yusuf) when he said:

“(For me) goodly patience and Allah is He whose help is ever there to seek against that which you describe. (12:18)

At that very instant, revelation descended on Allah’s Messenger (Sm). We kept silent. When it was over, I detected signs of relief on the Prophet’s face. He was wiping his forehead when he said, “Good things to you, O Ayshah! Allah has indeed revealed your acquittal.” But I was in sever anger. My parents said to me, “Get up and go to him,” but I refused. “No, by Allah! By Allah, I will not go to him.”

Neither do I praise him nor do I praise you two, but I praise Allah who has revealed my innocence. You all did hear it, yet you did not deny or change it.” Sayyidah Ayshah (R) used to say. “As for Zaynab bint Jahsh, Allah protected her because of her religious attitude and she did not say any thing but good (words). As for her sister, Hammah, she was ruined alongwith those who were ruined. And those who spoke about the affair (a erogatory speech) were Mistah, Hassan ibn Thabit and the hypocrite Abdullah ibn Ubayy, who circulated the rumour and incited others to do likewise. He and Hammah were in the lead in this affair.” She added that Abu Bakr swore never to show favour to Mistah (with help), but Allah revealed the verse.

Let not the possessors of bounty and abundance among you: that is Abu Bakr

Swear off giving to the kinsmen and the needy and the emigrants in the way of Allah:

Let them pardon and overlook. Do you not love that Allah should forgive you? And Allah is Forgiving, Merciful (24:22)

Abu Bakr said, "Certainly, by Allah, O our Lord! We love that you forgive us." And he to him (mistah) whatever he was accustomed to give.

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ONLY THE RAPIST IS GIVEN THE HADD (PRESCRIBED PUNISHMENT)

3580. Sayyiduna Nafi (Rh) reported that (Sayyidah) Safiyah bint Abu Ubayd (R) informed him that one of the slave of the state (meaning of Khalifah Umar (R)) had sexual intercourse with a captive girl, who was part of the fifth of the booty, compelling her to submit to it though she was unwilling, thereby spoiling her virginity (meaning, he deflowered her). Umar (R) had him beaten fifty stripes, but did not have the girl get any stripes because he had compelled her (to have sexual intercourse) against her will.

COMMENTARY: The slave girl is exonerated and not punished. In this connexion, we may cite the verse (24: 33) of the Quran about one who is compelled to illicit sexual intercourse by her master.

{And do not compel your maids to prostitution, if they wish to observe chastity in order that you may seek the temporary benefit of the worldly life. If one compels them, then after their being compelled, Allah is Most Forgiving, Most Merciful}

ANOTHER HADITH ABOUT MOTZ FALL INTO SIN

3581. Sayyiduna Yazid ibn Nu'ayun ibn Hazzaal (R) reported from his father (Nu'aym ibn Hazzal) (R) who narrated: Ma'iz Ibn Maalik (R) was an orphan under my father's (Hazzal's) (R) care. He had sexual intercourse with a female slave of the neighbourhood my Father instructed him to go and tell Allah's Messenger (Sm) what he had done. "Perhaps he might seek forgiveness for you." His intention in that was merely a hope that It might be a means of escape for him. (My father had no intention to get him punished.) Thus, he came to him and submitted. "O Messenger of Allah, I have committed fornication. Enforce on me the punishment prescribed by Allah. He turned away from him, but he came back and repeated. "O Messenger of Allah, I have committed fornication. Do enforce the punishment prescribed by Allah on me." He said this four times (in four positions) after which Allah's Messenger (Sm) said, "You have said this four times, indeed (and this confirms your crime). With whom did you have the intercourse?" He named the woman and he asked, "Did you lie with her?" He said, "Yes." He asked, "Did you touch your body with hers?" He said, "Yes," Then, he asked, "Did you have sexual intercourse with her?" He said, "Yes."

Then he gave order about him that he should be stoned to death. So, he was taken to Harrah. (when he was stoned) he felt the pain caused by the stones and (become panicky and) could not endure it, so he ran away quickly. On the way, he met Abdullah ibn Unays (R) while those who had been stoning him (almost gave up and) could not overtake him. So, Abdullah hurled the bone of the foreleg of a camel at him. He hit him (on target) and killed him. Then he came to the Prophet (Sm) and mentioned that to him. But, he said, "Why did you not spare him? He might have (retracted from his confession or)

repented and Allah would have relented to him (and forgiven him).”

COMMENTARY: Ibn Hammam (Rh) points out that the place he was taken to it Harrah while Bukhari (Rh) names it as Musalla and Muslim and Abu Dawud name it, in one version, as Baqi Gharqad. Now, Musalla, as we said previously, is the place of funeral salah (prayer). It was in Baqi Gharqad. Tirmidhi Names it as Harrah as in this version of Abu Dawud. We might say that when he ran away on feeling the plain of toning, he was caught up at Harrah. Or, we might suppose that musalla was around Harrah. So, the narrators took either of the names. This reconciles the ahadith.

WHEN ADULTERY SPREADS, FAMINE TOO SPREADS

3582. Sayyiduna Amr ibn Aas (R) narrated that he heard Allah’s Messenger (Sm) say, “When fornication spreads among a people, famine befalls them and when bribery becomes common among a people, terror grips them.”

COMMENTARY: Bribery is a payment or inducement to someone to get him to act in one’s favour. Some people qualify it with the addition: ‘the favour is not worth that much payment as would normally call for wages over it.’ It could ask for a recommendation to an authority. This means that if payment to anyone is commensurate with labour put in to get the thing done, then it is not bribery.

So, too, if anything is paid without a precondition then it is not bribery.

Bribery is a social evil and a sin in Shariah. It also is a Moral injustice. It will be punished in the hereafter, but even in this world it is punished in different ways. The hadith says, for

instance, that its inauspicious nature effects all people and makes them cowards and they are overawed by other people and they fear their own. The corrupt who takes bribe sells his conscience and his faith. The result is that his energy, boldness and strength sap. Unlike one who cannot be bribed and because of that commands obedience of his subordinates, the man who takes bribe is afraid of everyone and is unable to discharge his duties honestly and is cowed down easily by other men.

Therefore, when rulers also become corrupt and can be bribed then the government is shaky. Lawlessness prevails. The subjects are not happy and face innumerable problems.

HOMOSEXUALITY IS A CURSE

3583. Sayyiduna Ibn Abbas (R) and Sayyiduna Abu Hurayrah (R) narrated that Allah’s Messenger (Sm) said, “He who does what the people of (Prophet) (Sm) practiced is accursed.”

3584. And Ibn Abbas (R) narrated that Ali (R) had both the doer and the one who had it done burned, and Abu Bakr (R) had a wall demolished on both of them (the active and the passive partner).

COMMENTARY: The Jami Saghir has a version transmitted by Imam Ahmad (Rh) from Hasan (Rh) as narrated by Ibn Abbas (R). It says:

“Accursed is he who denounces his own mother. Accursed is he who slaughters an animal calling a name other than Allah’s. Accursed is he who alters the frontiers of an Islamic territory. Accursed is he who misguides a blind man. Accursed is he who commits an unnatural act with an animal. And accursed is he who does what the people lu’t (AS) did.”

3585. Sayyiduna Ibn Abbas (R) narrated that Allah’s Messenger (Sm) said, “Allah Mighty and Glorious, will not look with mercy

at a man who (commits an unnatural act and) has intercourse with a man or a woman through their anus.”

HADD (PRESCRIBED PUNISHMENT) IS NOT IMPOSED ON ONE WHO HAS INTERCOURSE WITH ANIMALS

3586. Ibn Abbas (R) is reported to have narrated the hadith in a marfu form: “He who has intercourse with an animal is not given the prescribed punishment. Tirmidhi cited Sufyan Thawri as saying that this hadith is more sahih than the previous (# 3576): ‘If anyone has intercourse with an animal, kill him and kill the animal.’ The ulama (Scholars) abide by this (but he is given a discretionary punishment).

COMMENTARY: This hadith is not the personal opinion of Ibn Abbas (R) but these are the Prophet (Sm) words. It was not so then Sufyan Thawri (Rh) would not have compared it as better than the previous hadith.

DO NOT BE PARTIAL IN IMPOSING THE HADD (PRESCRIBED PUNISHMENT)

3587. Sayyiduna Ubadah ibn Samit (R) narrated that Allah’s Messenger (Sm) said, “Impose the prescribed punishments (hudud) of Allah on these who are near as also on those who are distant. And, let not anyone’s reproach hinder you in executing the commands of Allah.

COMMENTARY: ‘The near ones, and the distant ones refers to the relatives. The punishment must be imposed on the culprit whether he is a close relative or a distant acquaintance.

It could also mean that the hadd (prescribed punishment) must be imposed whether it is easy or difficult. In this case the words near and distant are used in this sense of ease and difficulty, or on the weak and the strong, equally.

In short hadd (prescribed punishment) must be imposed on every culprit: rich or poor king or subject, strong or weak, relatives or stranger.

LONG TERM BENEFITS OF ENFORCING THE HADD (PRESCRIBED PUNISHMENT)

3588. Sayyiduna Ibn Umar (R) narrated that Allah’s Messenger (Sm) said, “To enforce one of the (many) prescribed punishment (hudud) of Allah is better than having rain fall for forty nights in the lands of Allah.”

3589. Sayyiduna Abu Hurayrah (R) also narrated this hadith.

COMMENTARY: To enforce the hadd (prescribed punishment) is to prevent people from sin and disobedience. It is a means to the gates of heaven being opened for the descent of blessings.

In contrast, to forgive the hadd (prescribed punishment) or prescribed punishment, or to be lazy in imposing it is like giving an opportunity to the people to commit Sin and disobediences. When too many sins are committed, people are subjected to famine and mankind and other creatures comes on the verge of destruction. Indeed, it is said that the Hubari (bustard) dies because of the sins of the children of Aadam (AS) after becoming emaciated.

Generally man falls into evil ways. Then there is a strong tendency to commit sin. When this happens, Allah withholds rain and draught takes in its wake not only mankind but birds and animals. They are deprived of sustenance and die.

Bustard is named here specifically because it flies to distant places to find food.

THEFT (AMPUTATING THE THIEF)

Such ahadith are presented in this chapter as tell us whether it is permitted to intercede with the ruler for an accused or not. May he be requested not to impose' the hadd (prescribed punishment) on him? Does the ruler have authority to accede to the recommendation?

INTERCESSION REGARDING HUDUD MAY NOT BE ACCEPTED

3610. Sayyidah Ayshah (R) narrated that the Quraysh (sahabah) (R) were very worried about a Makhzumi woman. She had stolen something (and she used to borrow different things from people and then would refuse to acknowledge that she had borrowed anything. The Prophet (Sm) had decided that her hand should be cut off). They consulted (among themselves), "Who shall speak to Allah's Messenger (Sm) about her (to make a recommendation)?" Then they said, "Only Usamah ibn Zayd (R) (is one whom he loves dearly so he) will make bold to speak. He is the friend of Allah's Messenger (Sm) (Hence, they all persuaded Usamah (R) to speak to the Prophet (Sm) about the woman). Usamah spoke to him. And, Allah's Messenger (Sm) asked, "Do you intercede concerning a hadd (prescribed punishment) of Allah's hudud?" (Meaning a prescribed punishment). Then, he got up and delivered a sermon and (after praising and glorifying Allah) he said, "Those who preceded you were ruined only because when anyone of position among them stole something, they let him go free (unpunishment). But when a weak man among them stole something, they enforced the prescribed punishment on him. And, I swear by Allah, were Fatimah bint Muhammad to steal, I would have her hand cut off."

According to another version: She (Sayyidah Ayshah (R)) narrated: A Makhzumi woman used to borrow things but refuse to acknowledge receipt of those things. The Prophet (Sm) gave an order to have her hand cut off. Her family members came to (Sayyiduna) Usamah (R) and spoke to him (about it, requesting him to intercede in the matter). So, he spoke to Allah's Messenger (Sm) about her...The rest of the hadith is like the preceding words.

COMMENTARY: The woman mentioned in the hadith was Fatimah bint Aswad ibn Abdul Asad. She was the daughter of the brother of Abu Salamah (R). She was called Makhzumiyah because she belonged to the tribe of Makhzum a prominent tribe of the Quraysh.

The ulama (Scholars) agree, on the basis of this hadith, that it is forbidden to make a recommendation to the ruler for an accused after the case of hadd (prescribed punishment) is presented to him. It is also forbidden to get anyone else make a recommendation. However, most ulama (Scholars) say that it is allowed to make a recommendation, or get someone else do it, before the case is forwarded to the ruler, provided the person for whom it is made is good, virtuous one who does not hurt people.

If a person has committed a wrong that does not make him liable to hadd (prescribed punishment) but to tazeer then it is allowed to make a recommendation for him in all instances irrespective of whether the case is sent to the ruler or not. The reason is that it is not only easy but also mustahab (desirable) to make a recommendation in such cases. However, the recommendation must be made for one who is an upright person who hurts no one. The second version is from sahih Muslim and though it seems from it that the Prophet & (Sm) punished her because she borrowed things from different people and then denied

altogether that she had done that, the correct thing is that the punishment of cutting off hands was because she stole things from other people. The hadith only mentions her habit. Besides she could not have been given that punishment for denying that she had borrowed something. The words 'she stole' are understood in the second version after 'she denied'.

A majority of the scholars say that anyone who borrows something but denies having borrowed anything is not awarded a punishment of having his hand cut off. However, Imam Ahmad (Rh) and Ishaq (Rh) assert that it is wajib (obligatory) to cut off hand of such person too. This chapter is without section II.

ONE WHO INTERCEDES REGARDING HADD (PRESCRIBED PUNISHMENT) REJECTS ALLAH'S COMMAND

3611. Sayyiduna Abdullah ibn Umar (R) narrated that he heard Allah's Messenger (Sm) say, "If anyone's intercession hinders the execution of one of the punishments prescribed by Allah then he has contradicted Allah. (In this way he opposes Allah.) If anyone disputes about something knowing that it is unjust and false, then he remains in Allah's displeasure till he ceases (to dispute). If anyone falsely accuses a believer (of something that is not found in him), then Allah will make him lie in the corrupt fluid (of puss and blood) flowing from the inmates of hell till he retracts what (false words) he had spoken." (it means that he will continue to remain like the inmates of hell till he makes a repentance, or till he undergoes the torment of hell.) Bayhaqi also has: "He who helps in a dispute without knowing it to be true or false, will continue to remain in Allah's displeasure till he ceases (to aid in the dispute)."

PUNISHMENT FOR STEALING ON CONFESSION

3612. Sayyiduna Abu Umayyah Makhzumi (R) narrated that a thief was brought to the Prophet (Sm) He had confessed to his crime, but no stolen property was found on him. Allah's Messenger (Sm) said to him, "I do not suppose that you have stolen anything?" He said, "Yes, I have!" He (the Prophet (Sm) asked him (the same question) twice or thrice but he insisted, "I have!" So, he gave an order and his hand was cut off. After that, he was brought to him and Allah's Messenger (Sm). said to him, "Seek forgiveness of Allah and repent to Him."

He said, "I seek forgiveness of Allah and I repent to Him." Then, Allah's Messenger (Sm) prayed, "O Allah accept his repentance."

(The compiler of the Mishkat says:) I found this tradition in all the four books (Abu Dawud, Nasa'i, Ibn Majah and Darimi), in Jami ul-Usul, in Shabul ul - Eaman of Bayhaqi and in Muallim us-Sunnah (Prophet's (Sm) practice) of Khattabi (Rh) as narrated by Abu Umayyah (R), but by:

3613. Abu Rimthah (R) in the texts of Masabih.

Hafiz Ibn Hajar Asqalani (Rh) said that though Abu Rimthah (R) was a sahabi, this tradition is not narrated by him.

COMMENTARY: The Prophet (Sm) gave to man an opportunity to retract his confession in order that hadd (prescribed punishment) may be averted from him. This is like he had done with those who were accused of adultery.

Of the two verdicts of Imam Shafi'I (Rh) one is according to this hadith. But, Imam Abu Hanifah (Rh) and the other Imams hold that encouragement to provide an excuse or to retract confession is given only in cases of adultery.

The Prophet (Sm) instructed this man to repent which means that while that particular sin is forgiven on undergoing the prescribed punishment for it, other sins are not forgiven. So an istighfar should be made.

PUNISHMENT FOR DRINKING WINE IN PROPHET'S TIMES

3614. Sayyiduna Anas (R) narrated that the Prophet (Sm) used (to order) a beating with branches of palm trees and sandals (as prescribed punishment) for consuming wine and (Sayyiduna) Abu Bakr (R) awarded forty lashes.

3615. (According to another version) from Sayyiduna Anas (R) the Prophet (Sm) used to award forty stripes with branches of palm trees and sandals (as prescribed punishment) for consuming wine.

COMMENTARY: The second version explains the first by giving the number of stripes. Imam Shafi'I (Rh) follows this hadith. Imam Abu Hanifah (Rh) goes by those ahadith that give the number of stripes as eighty. Mulla Ali Qari (Rh) has commented on these ahadith in details in Mirqat.

EIGHTY STRIPES WERE AWARDED BY THE SAHABAH (PROPHET'S COMPANIONS) (Sm) IN THEIR TIMES

3616. Sayyiduna Sa'ib ibn Yazid (R) narrated, "In the time of Allah's Messenger (Sm) and of Abu Bakr's (R) Khilafah (caliphate) and in the beginning of Umar's Khilafah (caliphate), when a drunk was brought, we got up and beat him with our hands, sandals and cloaks (using them as whips). At the end of Umar's Khilafah (caliphate), he awarded forty stripes, but when they (alcoholics) transgressed and increased in number, he awarded eighty stripes."

COMMENTARY: Sa'ib ibn Yazid (R) meant that the punishment to a person who consumed wine without defining number of beatings and it was less than forty stripes. Anyway,

in the time of the Prophet (Sm) the punishment was not eighty stripes. Rather, eighty lashes were determined in the time of the sahabah (Prophet's Companions) (R) Umar (R) imposed it when the evil began to spread and had to be curbed. The sahabah (Prophet's Companions) (R) concurred with him. So now no one is allowed to contradict it. Sayyiduna Ali (R) said that the Prophet (Sm) and Sayyiduna Abu Bakr (R) had awarded forty stripes. Then Sayyiduna Umar (R) made it sunnah (Prophet's (Sm) practice), yet the consensus is on eighty stripes.

COMMAND TO KILL DRUNKARD IS WITHDRAWN

3617. Sayyiduna Jabir (R) (ibn Abdullah) narrated that the Prophet (Sm) said, "If anyone drinks wine, give him the lashes, and if he does it a fourth times then kill him." Jabir (R) added that thereafter a man who had brought to the Prophet it (Sm) but he awarded him the lashes and did not kill him.

3618. Sayyiduna Qabisah ibn Dhu'ayb (R) narrated it too.

3619. Some of the sahabah (Prophet's Companions) (Sm), among them Ibn Umar (R), Mu'awiyah (R), Abu Hurayrah and Sharid (R) narrated it too but up to the words 'kill him' (without mentioning the man who had drunk wine four times and was brought to him).

COMMENTARY: The words 'kill him' perhaps mean that he should be beaten severely. Or, the prophet (Sm) said that merely to give a warning to habitual drunkards. He did not mean to enact a law or to make it wajib (obligatory). Some authorities maintain that in the beginning, this command was in force and then it was rescinded. The fact that the Prophet (Sm) did not have the drunkard who was brought to him killed

proves that his command was only to warn, or he withdrew the command. Nawawi (Rh) has quoted Tirmidhi (Rh) that, apart from two hadith in his book, there is no third which the entire ummah agrees that should not be put in practice. One of the two is that which permits offering two salah (prayer) (of different hours) together without a valid reason like fear or rain and the second is this one about a drunkard being killed if he does it a fourth time. (Ahadith # 187,188 and 1499, this one under discussion in Tirmidhi.)

DRINKER DISGRACED

3620. Sayyiduna Abdur Rahman ibn Azhar (R) narrated, “It seems as if I still see Allah’s Messenger (Sm) when a man who had drunk wine was brought to him. He instructed the men to beat him. Some of them beat him with sandals. Some of them beat him with sticks and some more of them struck him mitakhah.” Ibn Wahb (a sub-narrator of this hadith) explained that mitakhah is a green twig of a palm tree without any leaf on it.

(Abdur Rahman continued:) “Then Allah’s Messenger (Sm) took some dust from the ground and cast it on his face.” He said that in this way he expressed a dislike for his habit because it was a very repulsive deed.

DO NOT CURSE THE DRUNKARD

3621. Sayyiduna Abu Hurayrah (R) narrated that a man who had drunk wine was brought to Allah’s Messenger (Sm). He instructed them to beat him. So, among them was the striker with his hand, striker with his garment, striker with his shoe. Then, he instructed them to reproach him (with their tongue). So, they turned to him and scolded him, saying, “You are not

afraid of Allah. You do not fear Him. You do not feel ashamed before Allah's Messenger." Some of them rebuked him, "May Allah shame you!" But, he said to them, "Do not say so and thereby do not help the devil overcome him. Rather, Pray, 'O Allah, forgive him! O Allah, have mercy on him.'

COMMENTARY: The command to reproach the drunkard is of a *mustahab* (desirable) nature. But, the first command to beat him was *wajib* (obligatory).

They were instructed not to curse him because if Allah disgraced him then the devil would have power over him. Besides, if he was cursed, he could lose hope in Allah's mercy. In that way, the devil would achieve his wish, and if he commits more sin, Allah's wrath would fall on him.

PUNISHMENT ONLY AFTER PROOF

3622. Sayyiduna Ibn Abbas (R) narrated that a man drank (wine) and became intoxicated. He was seen on the road (by the people) walking unsteadily (and screaming nonsense). He was being taken to Allah's Messenger (Sm) but when he was near the house of (Sayyiduna) Abbas (R) he broke free (from them) and went to Abbas (R) and clasped him (intending to get his intercession). The Prophet (Sm) was told of that. He laughed and asked, "He did it, is that so?" And he did not give any command about him.

COMMENTARY: The Prophet (Sm) did not punish this man because neither did he receive his confession nor did anyone testify against him. If he had come to the Prophet (Sm) and confessed to his sin or witness had borne out against him, then the *hadd* (prescribed punishment) would have been enforced against him.

As for his walking unsteadily on the road, this observation is not enough for a Shariah rule to be applied punishing anyone for drinking wine.

DIYAH IS NOT WAJIB (OBLIGATORY) IF ONE DIES WHILE RECEIVING STRIPES

3623. Sayyiduna Umayr ibn Saeed Nakha'ee (Rh) narrated that he heard Sayyiduna Ali (R) ibn Abu Talib (R) say, "If I were to award the hadd (prescribed punishment) to anyone and he were to die (while he is being flogged) then I shall have no regrets about him (because that would be in compliance with Shariah). But, this Excludes one who has drunk wine. If he were to die (while being flogged), I shall pay the bloodwit for him. That is because Allah's Messenger (Sm) had not specified the hadd (prescribed punishment) about him, as a sunnah (Prophet's (Sm) practice)."

COMMENTARY: The Prophet (Sm) did not specify how many stripes should be awarded to one who drinks wine. Some ahadith, however, say that forty, or about forty, stripes are to given to a drunkard.

Sayyiduna Ali (R) was apprehensive lest the number of lashes that he awarded to the man (and he died) was in excess of the prescribed then he would have to make a retaliation. This action was a caution approach by Ali (R) because when Umar (R) decided to specify the number of stripes to a drinker of wine and consulted the sahabah (Prophet's Companions) (R), Ali (R) had said that he considered right stripes to be proper.

UMAR (R) SPECIFIED THE NUMBER OF STRIPES TO DRUNKARD

3624. Sayyiduna Thawr ibn Zayd Daylami (R) said that Umar (R) sought advice (of the sahabah (Prophet's Companions) (R) about the prescribed punishment for drinking wine. Ali (R) said to him, "I suggested that you should award him (drinker of wine eighty stripes because when he drinks (wine), he becomes intoxicated. When he is intoxicated, he talks incoherently. When he talks incoherently he slanders." So, Umar (R) prescribed eighty stripes as punishment for drinking wine.

COMMENTARY: The punishment to one who slanders, accuses falsely or defames innocent women is eighty lashes. So on the same premise a drinker of wine should be lashed eighty times.

This punishment is given to everyone who drinks wine whether he slanders others or not. Umar (R) accepted this opinion of Ali (R) and fixed eighty stripes for drinking wine. The sahabah (Prophet's Companions) (Sm) unanimously agreed to that. [The name of the narrator Thawr ibn Zayd Daylami appears in the Muwatta as Thawr ibn Zayd (R) Dilli.]

CURSE MAY NOT BE INVOKED ON ONE WHO HAS BEEN AWARDED THE PRESCRIBED PUNISHMENT

In this chapter, we shall speak of a person who has become liable to receive a prescribed punished. Then, it is awarded to him. After that, is it proper to curse him and pray against him? For instance, a man cursed a drunk, may Allah disgrace and deprive you!" Allah's Messenger (Sm) said to him that he must not do that, but he must pray for him to be forgiven and shown mercy.

DISALLOWED TO CURSE A SINNER

3625. Sayyiduna Umar ibn Khattab (R) narrated that a man whose name was Abdullah and sobriquet was Himar (meaning. Ass, because of his foolishness) used to make the Prophet (Sm) laugh. The Prophet (Sm) had awarded him lashes for drinking wine. One day, he was brought (again) and he gave an order about him, and he was flogged. One of the men there prayed against him, "O Allah, curse him! How often he is brought (here for drinking wine)!" The Prophet (Sm) said, "Do not invoke a curse on him, for by Allah, I do know that he loves Allah and His Messenger!"

COMMENTARY: It is not permitted to curse a sinner by name, specifically. And, love of Allah and His Messenger (Sm) are a means to drawing near Allah, so it is never allowed to invoke a curse on those who love Allah and His Messenger (Sm) because the word (lanat-curse) implies deprivation of Allah's mercy.

3626. Sayyiduna Abu Hurayrah (R) said, "A man who had drunk wine was brought to the Prophet (Sm). He instructed (the men around) to beat him. So among us was the striker

with his hand, the striker with his shoe, and the striker with his garment. As he was going away (after the punishment), someone among the people said (itowiV) (may Allah disgrace you!). The Prophet (Sm) said, 'Do not say so and do not support the devil in over whelming him.' "

DEFAMING ONE WHO IS PUNISHED IS LIKE EATING CARRION

3627. Sayyiduna Abu Hurayrah (R) narrated that (Ma'iz) Aslami (R) came to the Prophet (Sm) and testified against himself four times that he had committed adultery with a woman. Each time the Prophet (Sm) turned away from him (allowing him an opportunity to retract and avert the hadd (prescribed punishment)). But, the fifth time, he faced him and asked, "Did you have intercourse with her?" He said, "Yes!" He asked, "Till that from you (your sexual organ) disappeared in that of hers?" He said, "Yes!" Then, he asked, "Like a collyrium stick disappears in the case and a rope in the well?" He said, "Yes!" He asked, "Do you know what adulterers is?" He said, "Yes, I did with her unlawfully what a man does with his wife lawfully." He asked, "What do you intend (to get) by this confession?" He said, "I intend that you (punish and so) purify me." SO (having thus established his guilt) he gave command about him and he was stoned to death.

Then Allah's Prophet (Sm) heard two of his sahabah (Prophet's Companions) (Sm) say, one to his companion, "Look at this man! Allah did conceal his fault but his self did not spare him (from confessing to his sin) till he was stoned (to death), the stoning of a dog." But, he (the Prophet (Sm) said nothing to them. He walked a while till he came to the corpse of an ass (lying upside down) with its legs raised in the air (its body puffed up). He asked, "Where are so-and-so and so-and-so?"

(He meant the two men.) They exclaimed, "Here we are! O Messenger of Allah!" He said, "Alight, and eat from the corpse of this ass." They submitted, "O Prophet of Allah, who can eat any of that (flesh)?" He said. What the two you have just now spoken in defaming your brother is more repulsive than eating from it. By Him who has my soul in His hand. He (Ma'iz) is now in the rivers of paradise, diving into them."

3628. Sayyiduna Khuzaymah ibn Thabit (R) narrated, "If a person commits a sin and receives the prescribed punishment for that sin (like lashes for adultery and cutting off hand for stealing) then it is expiation for his sin."

PUNISHMENT AVERTS RECKONING IN THE HEREAFTER

3629. Sayyiduna Ali (R) narrated that the Prophet (Sm) said, "If anyone is liable to receive the hadd (prescribed punishment) (having committed a sin that makes had (prescribed punishment) wajib (obligatory) on him or a tazeer wajib (obligatory) on him), then Allah is too Just to punish His slave in the hereafter a second time. And as for him, who commits a sin (and is liable to receive a punishment of had (prescribed punishment)) and Allah conceals his crime and pardons him then Allah is too kind to return to something that He has forgiven.

COMMENTARY: The man made a sincere repentance seeking Allah's forgiveness. So, Allah forgives him in this world and conceals his sin. It is expected of Him, therefore, that He will be kind and forgive him in the hereafter, too.

TAZEER (DISCRETIONARY PUNISHMENT)

The root of the word tazeer is azzar. It means to forbid, 'to stop', 'to blame'. In the terminology of shariah, this word (tazeer) is used in the sense of the punishment that is milder than hadd (prescribed punishment) and is awarded by way of a warning and a deterrent. It is called tazeer because it is aimed to prevent one from committing the deed (sin or crime) again because of which one had to undergo the punishment (tazeer).

DIFFERENCE BETWEEN HADD (PRESCRIBED PUNISHMENT) & TAZEER: Hadd (prescribed punishment) is the punishment prescribed by Allah's Book and the sunnah (Prophet's (Sm) practice) of His Messenger and it is also specified. The ruler has authority only to enforce it but he is not allowed to enact it or to amend it. On the other hand, tazeer is punishment that is not specified by Allah's Book or the sunnah (Prophet's (Sm) practice) of His Messenger (Sm). Rather, it is enforced at the discretion of the ruler. He may determine it according to circumstances and exigencies of the time and need of the moment.

THE MAXIMUM PUNISHMENT AS TAZEER

3630. Sayyiduna Abu Bardah ibn Niyar (R) narrated that the Prophet (Sm) said, "More than ten lashes must not be awarded (in punishment to anyone), except in one of the hadd (prescribed punishment) (prescribed punishment of the) of the hudud of Allah."

COMMENTARY: Though this hadith says that it is not allowed to award more than ten lashes in the cases of discretionary punishments or tazeer yet the ulama (Scholars) say that this hadith is abrogated.

As for the maximum number of lashes to be awarded in case of tazeer, the jurists have different opinions about it. Imam Abu Hanifah (Rh) and Imam Muhammad (Rh) say that more than thirty-nine lashes must not be awarded to anyone. Imam Abu Yusuf (Rh) says that a maximum of seventy lashes may be awarded.

As for the minimum number of lashes, all of them agree that they should be three. Moreover, they agree too that the number of lashes awarded in case of tazeer should not be as many as the number awarded against hadd (prescribed punishment). However, if they are more severe than that then there is no harm.

DO NOT BEAT ON FACE OF THE GUILTY

3631. Sayyiduna Abu Hurayrah (R) narrated that the Prophet (Sm) said, “When any one of you enforces a beating (on the guilty), he should keep away from (striking) the face.”

PUNISHMENT FOR RUDENESS

3632. Sayyiduna Ibn Abbas (R) narrated that the Prophet (Sm) said, “If anyone calls another person, ‘O Jew’ then give him twenty lashes. If he calls him ‘O mukhannath/ then give him twenty lashes. If a man has (illicit) sexual intercourse then kill him.

COMMENTARY: Mukhannath are effeminate men. Their limbs and their speech are like women’s. If anyone accuses a slave or an infidel of committing illicit sex though he is innocent, then the false accuser is awarded the tazeer (some kind of punishment). So too, if anyone falsely accuses a Muslim a crime other than adultery then he is awarded a tazeer (or discretion any punishment. A hadd (prescribed punishment)

is awarded for false accusation of adultery). Examples of these false accusations are calling him: O sinner, O disbeliever, O evil one, O thief, O hypocrite, O homosexual, O Jew, O mukhannath, O cheater, O son of an adulteress, O zindiq, (O dog), O supporter of adulterers or thieves, (O bastard).

Tazeer will not be liable on one who calls a Muslim: O donkey, (O dog), O monkey, and other animals, O barber, (O bastard), O deformed one, O worthless, O joker, O swindler, O knave, O fool, O doubter. However, the ulama (Scholars) say that the tazeer will be awarded to one who addresses these words to a virtuous, respectable person. (The words in parenthesis are repeated in both places in the original urdu.)

HUSBAND'S RIGHT: A husband has a right to punish his wife if she disobeys him when he asks her to adorn herself for him (when they are together alone), or when she does not respond to his advances, or if she does not offer the (prescribed) salah (prayer), or if she does not have a purifying bath (after sexual intercourse), or if she goes out of his house without his permission.

SEX WITH MAHRAM: If anyone has a sexual intercourse within the forbidden degrees (mahram), then he should be killed. Imam Ahmad (Rh) goes by this command but the majority of the ulama (Scholars) hold that the apparent meaning is not to be observed. This statement merely means to discourage such acts. Some others say that if a person regards sexual intercourse with a mahram as lawful then he should be killed, otherwise the same command as for adultery applies in this case too (as with any woman): the married fornicator is to be stoned to death while the unmarried adulterer is to be flogged.

STEALING SPOILS

3633. Sayyiduna Umar (R) narrated that Allah's Messenger (Sm) said, "When you detect a man who is treacherous (concerning spoils) in Allah's path, then burn his possessions and give him a beating."

COMMENTARY: Some ulama (Scholars) say that the command to burn his property is no more valid. It is abrogated.

Imam Ahmad (Rh) however, goes by the apparent meaning of this hadith. He says that all property and belongings of this man who misappropriates the spoils should be burnt, except copies of the Quran, weapons and animals.

Also, this man should be beaten as a discretionary punishment. However, as stated earlier, he is not liable to have his hand cut off. [And this chapter is without setion III]

ABOUT WINE & THE WARNING TO ONE WHO DRINKS IT

In this chapter, wine is defined, and to what the drinker makes himself liable and a warning is sounded to the drinker.

WHAT IS KHAMR: According to the Qamus, Khamr (wine) is that which intoxicates when it is drunk. It may be the crude juice of grapes or of any other thing. The more correct approach is to go by the generally understood meaning of the word whatever intoxicates whether juice of grapes or of any other thing, because wine was forbidden in Madinah when wine from grapes was unknown. Rather, Khamr was produced only from dates at that time.

WHY SO CALLED: In the opinion of the lexicographers, Khamr means 'to cover', 'to conceal', 'to confound'. Since wine covers the drinker's mind and confuses and confound his senses, so it is called Khamr.

KINDS OF INTOXICANTS: There are many kinds of things that intoxicate.

(1) One of these is wine. It is produced from grapes. Juice of grapes is placed in a vessel for a few days till it thickens and ferments and becomes ebullient and spirituous. In

this way, it becomes an intoxicant. The correct opinion which is observed is that it is not necessary for it to gather foam. It is called Khamr in Arabic.

(2) The second kind is to boil the juice of grapes to some extent and store (for some time). It is called (jiu) badhiq (in Arabic) and badah (in Persian). When the juice of grapes is boiled till one-fourth of it evaporates and three-fourths remains, it is called Tila.

(3) The third kind is called naqi-ut-tamr also called sikkir. It is the thickened juice of dates it gathers foam.

(4) The fourth kind is called naqi-uz-zabib.

It is the juice of raisins (large and small) that is boiled and produced foam.

RULING: Of these four kinds, the first kind is absolutely prohibited. There is no doubt about it. The remaining three kinds are prohibited in the unanimous opinion of the ulama (Scholars) when they are kept in a vessel after boiling them and they thicken, because in this way they become intoxicants. But, if they do not intoxicate then they are not forbidden. For instance, if dates are immersed in water for some time till the water looks like a sherbet (or juice) without any kind of change in it, then it is proper to drink it.

OTHER DRINKS: There are four other drinks which, according to Imam Abu Hanifah (Rh), are lawful to drink provided they are boiled in a simple way such that they do not intoxicate, but if they become intoxicants then these kinds also become forbidden. Again, if they are kept aside for along time without boiling them and they gather foam, then too it is forbidden to drink them.

NABIDTH: One of these four kinds is nabidth. It is produced from dates and is boiled to some extent. Even if it becomes dense then too it is allowed to drink it.

KHALEET: It is a juice prepared by boiling for a little.

THIRD KIND: It is nabidh prepared with honey, wheat, barley and corn or millet boiled in water to some extent to produce a drink.

MUTHALLITH YAMAN: It is the fourth kind. The juice of grape is boiled till two parts of it evaporate and one part (or one-third) of it remains as a drink.

RULING ON THESE FOUR: Imam Abu Hanifah (Rh) said that if anyone drinks any of them to gain strength to be able to worship well then it is allowed. But, if it is drunk to enjoy and get sexual pleasure then it is prohibited.

However, Imam Muhammad (Rh) held that is forbidden even to obtain energy for worship. The Hanafis, therefore, go by the ruling of Imam Muhammad (Rh) It is stated in the Ayni Sharh Kanz that Imam Maalik (Rh) Imam Shafi'I (Rh) and Imam Ahmad (Rh) and from the Hanafis Imam Muhammad (Rh) rule: If a greater part of anything is an intoxicant and inebriates and befuddles, then even a small quantity of it is forbidden, whatever the way it goes into the drinker's head.

The evidence lies in the hadith in Ibn Majah and Daraqutni that Allah's Messenger (Sm) said, "Whatever is an intoxicant is wine and all intoxicants are forbidden."

Hence, the Hanafi abide by the ruling of Imam Muhammad (Rh)

We know, therefore that every thing spirituous and intoxicant is wine and forbidden whether it is a drink prepared from grapes, dates, raisin, honey, wheat, barley, millet or corn or it may be the extract or juice of any tree, or it may be a kind of grass. It is forbidden irrespective of the quantity consumed, small or great.

DIVORCE: If anyone divorces his wife in a state of intoxication, then, according to the jurists, divorce will be effective whether the intoxicant had resulted from wine or nabidh, etc. We stated in the foregoing lines that the Imams Maalik (Rh) Shafi'I (Rh) and Ahmad (Rh) ibn Hanbal (Rh) as also from the Hanafis Imam

Muhammad (Rh) and, besides them, the scholars of hadith, hold that every intoxicant is forbidden, little or much. Imam Abu Hanifah (Rh) holds that a drink is filthy and forbidden and falls under the same command as wine which boils, thickens and gathers foam. And, he says that apart from these, unless they intoxicate, other things are not forbidden. However, the research scholars of the Hanafis who prefer to exercise caution, follow the verdict of Imam Muhammad (Rh). It is stated so in the Nihayah, Ayni, Zayl'i, Durr Mukhtar, Al Ishabah wa an-Naza'ir , Fatawa Alamgiri, Fatawa Hummadiyah and Sharh Mawahibur Rahman. In fact, some of these assert the Imam Abu Hanifah (Rh) concurred with Imam Muhammad (Rh) In this case, all the imams are one on this issue.

Muwlana Abul Hayyi Lakhnowi (Rh) had answered a question that 'leaved bread' is forbidden. He delved exhaustively on the forgoing issue too and attested confirmation from nearly forty scholars of the Hanafis and the Shafi'is.

Among things that cause intoxication, are cannabis, intoxicating grass, herbal plants and opium. It is forbidden to eat or drink them because they completely disrupt the human mind and hinder man from worship. The Ulama (Scholars) state that if anyone says that cannabis etc are lawful (to consume) then he is zindiq and a bid'ati (innovator). Rather, the jurist Najmuddin Zahidi (Rh) has called him a disbeliever, and said that it is permissible to kill him.

TOBACCO: Also, tobacco is forbidden as stated in Durr Mukhtar. Shah Abdul Aziz Muhadd (prescribed punishment) ith Dahlawi (Rh) has classified puffing at a hookah (or a hubble bubble) as makruh tanzih (disapproved for purification). This is because the mouth of one who puffs at the hookah smells of onion and garlic and not only that it also resembles the inmates their mouths and it does also from this man's mouth. Besides,

sound nature dislikes this habit. Also, it causes extreme lethargy, and it causes some people to swoon. This thing is among the muftar, meaning that which creates sloth and neglect. According to a hadith transmitted by Imam Ahmad (Rh) and others:

“Whatever makes one lazy and neglectful is forbidden.” The compiler of Sirah and Sahah say muftar means to grow laziness. Imam Raghīb has written in Mufradat ul-Quran that *fatar* and *future* mean to ‘slow down after being active,’ ‘becoming mild after fervour,’ ‘turning feeble after good health.’ These things are found in one who puffs at the hookah.

As for the meaning of muftar given by some as ‘heating of the body,’ this is a rare meaning and it is contrary to what most lexicographers say unless it refers to an internal heat. Anyway, puffing at the hookah takes one away from Allah’s pleasure because it defies the sunnah (Prophet’s (Sm) practice) of siwak. While the siwak (cleanses the teeth and) removes the bad odour from the mouth, the hookah makes the mouth bad smelling. This hadith is found in the books of hadith Sahah, etc. about siwak:

“The siwak is a means of purifying the mouth and it earns the pleasure of the lord.” (siwak is a piece of a twig used to brush and clean teeth.)

[For more information see the English translation the Hidayah v2 pp 480 etc. Published in volumes by Darul-Isha’at, Karachi.]

INGREDIENTS OF WINE

3634. Sayyiduna Abu Hurayrah (R) narrated that Allah’s Messenger (Sm) said, “Wine is produced from these two trees: the date-palm and the grape-vine.”

COMMENTARY: The meaning is that these two things: dates and grapes are the main source of wine. It does not limit the sources to these two things because of the Prophet (Sm) saying "Every intoxicant is wine" (in that the same command applies to all).

3635. Sayyiduna Ibn Umar (R) said that (Sayyiduna) Umar (R) delivered a sermon from the pulpit of Allah's Messenger (Sm) and he said, "Prohibition of wine has been revealed. And it is produced from five things: grapes, dates, wheat, barley and honey. Wine is what covers and confounds the mind."

COMMENTARY: The ulama (Scholars) explain that the concluding words describe wine as what confounds the mind. Hence, these five things are not all from which wine is prepared. There are other things too (Prohibition was with verse 90 of sunah al-Ma'idah).

KHAMR WAS FROM DATES

3636. Sayyiduna Anas (R) said, "Prohibition of wine was (enforced promptly) when it was forbidden (by a revelation). We did not (at that time) get wine from grapes but a little. Most of our wine was from busr (unripe dates) and tamr (dry dates)."

COMMENTARY: The fresh bud, or plumule, on a palm tree is called tala in Arabic. It is the spadix which is the initial form of dates where after Khalal or green dates, busr or unripe dates, rutb or fresh, moist dates, are followed by dried dates and the final form tamr or ripe dates.

SPIRITUOUS DRINK IS FORBIDDEN

3637. Sayyidah Ayshah (R) said that Allah's Messenger (Sm) was asked about bit fe) or mead which is nabidh from honey. He said, "Every drink that intoxicates is forbidden."

COMMENTARY: The word bit is also biti. Honey is kept in a vessel for some days till it becomes strong like the nabidh from dates. Both kinds are forbidden if they cause intoxication. It is said that bit was common among the people of Yemen.

DEPRIVED OF PURE WINE OF NEXT WORLD

3638. Sayyiduna Ibn Umar (R) narrated that Allah's Messenger (Sm) said, "Every intoxicant is (under the same command as) wine and every intoxicant is forbidden. He who drinks wine in this world and dies as a habitual drinker, without making a repentance, will not drink it in the hereafter."

COMMENTARY: The habitual drinker drinks wine taking it to be lawful, or these words are meant to keep him away from drinking, or he will not get the pure wine of the next world with those who enter paradise straightaway.

WARNING TO DRINKERS

3639. Sayyiduna Jabir (R) narrated that a man arrived from Yemen. He asked the Prophet (Sm) about a kind of liquor they consumed in Yemen which was produced from corn and is called mizr. The Prophet (Sm) asked him, "Is it intoxicating?" He said, "Yes!" So, he said, "Every intoxicant is forbidden. And (remember) about one who drinks intoxicants that he will give him to drink from tinat ul-Khabal." They (the sahabah (Prophet's Companions) (R) asked, "O Messenger of Allah, what is tinat ul-Khabal?" He said, "The perspiration of the inmates of hell." Or, he said, "The puss from the wounds of the inmates of hell."

COMMENTARY: The translation of Shaykh Abdul Haq Muhadd (prescribed punishment)ith Dahlawi (Rh) gives the

meaning of Khabal as the ‘sweat’ or ‘puss or blood’ of the inmates of hell, and tinat as ‘sediment’.

ABOUT NABIDH

3640. Sayyiduna Abu Qatadah (R) narrated that the Prophet (Sm) forbade that dried date and unripe dates should be mixed (to prepare nabidh), that raisins and dried dates should be mixed (to prepare nabidh), that zahwi which is unripe date that takes yellow and red colour) should be mixed with fresh dates (to prepare nabidh). But, he said, “Prepare nabidh of each (by soaking it) separately.”

COMMENTARY: The Prophet (Sm) forbade the soaking of two kinds of fruit together (to make nabidh from them), but he allowed each to be soaked separately (to make nabidh from it). The reason is that one of the two kinds of fruit may respond to water more quickly than the other and become an intoxicant casting an influence on the other, The nabidh will cause intoxication and it will not be possible to identify the intoxicant. So, drinking it will be unlawful.

Imam Maalik (Rh) and Imam Ahmad (Rh) abide by this hadith. They say that it is unlawful to drink this nabidh whether it intoxicates or not. Other say that it is forbidden only if there is intoxicant from it.

ALLOWED TO CONSUME VINEGAR FROM WINE OR NOT?

3641. Sayyiduna Anas (R) said that the Prophet (Sm) was asked about wine being processed into vinegar (by immersing salt and onion into it). He said, “No.” (It is not lawful).

COMMENTARY: The Hanafis say that if wine is transformed into vinegar then it is allowed to use it for eating and drinking.

The vinegar may be prepared by mixing something in wine or without adding anything to it, by putting it aside for many days, or by leaving it in the sun after which it turns into vinegar automatically.

Imam Shafi (Rh) says that if vinegar is processed by mixed something with wine, then it is not lawful to consume. If it is left in sun and it turns into vinegar without anything being added to it then he gave two verdicts about it and the more approved is that the wine is no more wine but will become pure and it will be allowed to consume it.

The Hanafis say that the Prophet (Sm) had said unreservedly: (The best of seasoning is vinegar.) Hence, vinegar is lawful. Secondly, if the impurity is removed from wine because of which it was unlawful and a pure state is introduced into it then becomes lawful to consume.

As for this hadith (under discussion) the Hanafis say that the Prophet (Sm) had denied that it was lawful because this question was asked after wine was forbidden and people had long been used to drinking it. Naturally, any habit that has been given up after a very long practice does not go out of minds suddenly. Minds do incline toward it for a long time afterwards. Therefore, the Prophet (Sm) forbade the use of vinegar processed from wine lest the devil tempt the people to drink wine in the name of vinegar. Later, when the people were used to the prohibition of wine and there was no likelihood of their returning to it, the consumption of vinegar was permitted, processed from wine. The compiler of Hidayah has transmitted a hadith from Jabir (R) in a marfa form:

(The best of your vinegar is that which is produced from wine).
Bayhaqi, Kitab Marifah.

NOT TO BE USED AS MEDICINE

3642. Sayyiduna Wa'il al-Hadrami (R) narrated that (Sayyiduna) Tariq ibn Suwayd (R) asked the Prophet (Sm) about wine. He forbade him. Then he submitted, "We (will) only use it as a medicine." He said, "It is not a medicine but is (itself) a malady."

COMMENTARY: Most ulama (Scholars) say that wine must not be used as medicine. Some ulama (Scholars) maintain, however, that if a physician says that there is no remedy for an illness but wine, then it is allowed to use it, but the physician must be skilled. Similarly, if a morsel or something else gets stuck in a person's throat and cannot be swallowed and there is no water or any liquid to gulp it down so that he might die of suffocation, then all the ulama (Scholars) say, unanimously, that it is lawful to drink only so much wine as is enough to get that thing down the throat.

ALLAH HAS NOT PLACED CURE IN THE UNLAWFUL THINGS

It has been mentioned earlier in the beginning of the previous chapter, that the prohibition of wine was not sent down (in the verses of the Quran) all of a sudden but was sent down gradually. The first of these verses was cited there. It also says: {and there is some benefit in it for the people}

The exegetes have written much on what these benefits could be. Some of them have pointed out that benefits refer to the soundness of the human body but can wine benefit the human body in any way, or be a means of cure of some illness? We must remember the words of the Prophet (Sm) that Allah has not placed cure in anything that is unlawful.

PUNISHMENT FOR DRINKING WINE

3643. Sayyiduna Abdullah ibn Umar (R) narrated that Allah's Messenger (Sm) said, "If anyone drinks wine (and does not repent) then Allah does not accept his salah (prayer) for forty days. If he repents then Allah relents to him. If he reverts (to it), then Allah does not accept his palah (prayer) for forty days, but if he repents then Allah relents to him. Again, if he reverts (to it), then Allah does not accept his salah (prayer) for forty days, but if he repents then Allah relents to him. Then, if he reverts to it a fourth time, Allah does not accept his salah (prayer) over forty days and even if he repents, Allah does not relent to him, and He will give him to drink from the river of Khabal (which is the pus of the inmates of hell)."

3644. Sayyiduna Abdullah ibn Amr (R) narrated (the same hadith # 3463).

COMMENTARY: The man will not get reward for offering salah (prayer) but he will have discharged his duty to offer it. The worship of salah (prayer) has been mentioned here specifically to make realize that when salah (prayer) is not approved which is the superior most of all physical forms of worship then what way be said of the other forms of worship.

The number of forty days is perhaps mentioned because a drunkard retains the effect of wine in different ways for as many days.

The Prophet's (Sm) words that Allah will not relent to him the fourth time are by way of warning and are meant to keep him away from sin. In fact, he has said elsewhere, "If anyone sins and regrets and makes a repentance and hopes that Allah will forgive him then he is not defiant even if commits the same sin seventy times in a day."

Or, the Prophet's (Sm) words mean that he who drinks wine the essence of all sins is so much under its bleak influence that he is unable to make a sincere repentance. He is lost to the extent that he dies in his obstinacy.

LITTLE OF INTOXICANT IS ALSO HARAAM

3645. Sayyiduna Jabir (R) narrated that Allah's Messenger (Sm) said, "If much of anything intoxicates, then a little of it is (also) prohibited."

COMMENTARY: If there is a liquor whose large amount causes intoxication but a small amount does not intoxicates then it does not follow that its small amounts may be consumed. Rather, even a little of it is haraam (prohibited), for, it is with man that he goes on increasing the amount of whatever he uses. Hence, we must abstain from small amounts, too.

HANDFUL OF INTOXICANT IS ALSO FORBIDDEN

3646. Sayyidah Ayshah (R) narrated that Allah's Messenger said, "If a faraq of anything intoxicates, then a handful of it is forbidden (too)."

COMMENTARY: A faraq is three sa's (eight seers). The hadith means that whatever causes intoxication is forbidden irrespective of quantity.

WHAT MAKES WINE

3647. Sayyiduna Numan ibn Bashir (R) narrated that Allah's Messenger (Sm) said, "Indeed, from wheat wine is had, from barley wine is had, from dates wine is had, from grapes wine is had and from honey wine is had."

COMMENTARY: the ulama (Scholars) say that the hadith does not mean that wine is made from only these things. They are, however, the sources of wine, generally. Ibn Maalik (Rh) said that wine (Khamr) is from grapes but the word is used for other sources too because the wine from them (as from nabidh) also knocks out the mind.

WINE IS NOT A PRECIOUS COMMODITY

3648. Sayyiduna Abu Sa'eed Khudri (R) said, "We had with us wine belonging to an orphan (who was under our care and whose miscellaneous property was entrusted to us). When surah al-Ma'idah (meaning its verse 90 was revealed), I asked Allah's Messenger (Sm) about it and informed him that it belonged to an orphan (whose property should be preserved). He said, "pour it out."

COMMENTARY: Wine is not a property of value. It is not lawful to earn a profit from it and we must despise it. Hence it must be spilled out.

3649. Sayyiduna Anas (R) reported about (Sayyiduna) Abu Talhah (R) that he asked, "O Prophet of Allah, I had bought wine for the orphans in my charge."

He said, "Pour out the wine and smash the vessels.

According to another version: He asked the Prophet (Sm) about the orphans who had inherited wine. He said, "Throw it away!" He asked, "May I not make vinegar put of it?" He said, "No!"

COMMENTARY: Abu Talhah (R) had bought wine for the orphans in his care when it was not prohibited. When he asked him about it, the Prophet (Sm) instructed him to spill out the wine and break the vessels that contained it because wine may have seeped through into them. There was no way they

could be purified. Or, the Prophet (Sm) may have meant to emphasise the prohibition of wine. It was so serious that the vessels associated with wine may also be eliminated.

He also disallowed the making of vinegar from it. Perhaps this was also to emphasise the dislike for wine. Or, the forbidding was by way of makruh tanzih (disapproved for purification).

WHAT INTOXICATES & CAUSES LETHARGY & WEAKNESS IS FORBIDDEN

3650. Sayyiduna Umm Salamah (R) said that Allah’s Messenger (Sm) forbade everything that causes intoxication and renders (the drinker) languid.

COMMENTARY: The word rendered ‘languid’ is (muftir). It is said of a man when his eye lashes become weak and the eye balls seem to have been raised. It is used for something that heats the heart and mind and then makes them remiss, faint and become allayed. On the basis of this interpretation, the dill (or dill weed) of Khurasan and such other culinary herbs that cause weakness and laxity (after initial heat) are deduced to be forbidden.

The aforementioned meaning is from the Nihayah.

[According to lane’s lexicon, ‘it is a beverage that renders languid the drinker... or which heats the body and occasions in it a languor, or laxity of the joints and weakness: such beverage is prohibited.]

WINE IS NEVER PERMITTED

3651. Sayyiduna Daylam Himyariy (R) narrated that he submitted, “O Messenger of Allah, we reside in a cold land where we have to undertake strenuous work (that requires tremendous physical exertion). So, we make wine from wheat to energise ourselves from it for our work and to withstand the

it intoxicate?" He said, "Yes". He submitted, "The people will not refrain from it." He said, "If they do not give it up (and deem it to be lawful) then fight with them."

WINE & GAMES OF CHANCE FORBIDDEN

3652. Sayyiduna Abdullah ibn Amr (R) narrated that the Prophet (Sm) forbade (the consumption of) wine, (indulging in) gambling, (playing the) Kubah (game of chess or a kind of drum or the game backgammon or lute), and (drinking) ghubayra (a kind of wine). And he said, "Every intoxicant is prohibited."

COMMENTARY: Kubah is the game of chess or backgammon, or a drum or a lute. (Maysir a game of chance). And ghubayra is a kind of wine prepared from corn or millet by the Ethiopians.

DRINKER WILL NOT ENTER PARADISE

3653. Sayyiduna Abdullah ibn Amr (R) narrated that the Prophet (Sm) said, "A disobedient son and a gambler, and one who reminds of his favours and a habitual drinker will not enter paradise (with those who are admitted at an early stage after earning deliverance)."

According to another version from him: "A disobedient son and a bastard, and one who reminds of his favours and a habitual drinker..." to the end.

COMMENTARY: Every play in which a bet is placed on something, or money is staked on something, is gambling. Speculation or forward trading is also gambling.

Teebi (Rh) said that mannan could mean 'to brag about one's favour's. But, it could also mean one who' cut off.' So, he is who severs ties of relationship.

The hadith that a bastard will not enter paradise is neither sahih (or sound) nor may it be termed mawdu (or invented). Rather, it is a weak tradition. If it were to be said to be sound to some degree then it may be explained that normally a child born out of wedlock is deprived of its father's care and remains under the shadow of its mother's bad character, so it goes astray and falls into evil.

It may also be said that such a child is auspicious. Or, it is a warning to such people who indulge in unlawful intercourse to desist them they give birth to such children. Some people say that walad uz-zina does not mean bastard but refers to those people who are habitual adulterers. It is like saying banu al-harb (children of war) or banu al-Islam (children of Islam), respectively, fighter, Muslims.

Hence, this hadith does not say that a bastard will go to hell because he is born out of wedlock. He was not at fault for the sin that was the means of his birth.

WARNING TO A DRUNKARD

3654. Sayyiduna Abu Umamah (R) narrated that the Prophet (Sm) said, "Allah has sent me as a mercy to the worlds and as a guidance to the worlds. And my lord Mighty and Glorious, has commanded me to eliminate (musical) stringed instruments and wind instruments, idols, crosses and customs of the jahiliyah (ignorance period) (pre-Islamic disbelief). And, my lord, Mighty and Glorious, has sworn, 'By My Mighty, if any of My slaves sips a mouthful of wine then I shall give him (in the next world) as much of pus (of the inmates of hell) to drink. But, if he abandons it (drinking wine) through fear of Me then I will give him (in the next world) drink from the sacred ponds (of paradise)."

COMMENTARY: The (musical) instruments comprise every conceivable kind, like drums, flutes, etc. But the stringed and wind instruments are forbidden because they were used by the misled people since ancient times.

The jurists rule that humming tunes and singing songs with the musical instrument are unlawful, but without the musical instrument, they are makruh (disapproved). Moreover, to listen to songs and tunes sung by stranger women is strictly forbidden. The cross is a sacred symbol of the Christians. It reminds them of their belief that Prophet (Sm) was crucified the cross depicts the manner in which he was put on it according to their belief. Hence, the Prophet (Sm) was commanded to eliminate this symbol, too. The Muslims are forbidden to use any such thing on which this symbol is found, for, it resembles another people and it is unlawful in Islam.

As for the customs of the jahiliyah (ignorance period), they are those that are absolutely false and fake. They were practiced before the advent of Islam unrestrictedly. Examples are wailing, boasting on ancestors and family background and finding faults with lineages of other people.

DISOBEDIENT CHILDREN CUCKOLD & DRUNKARD

3655. Sayyiduna Abdullah ibn Umar (R) narrated that Allah's Messenger (Sm) said, "Three there are to whom Allah has forbidden (admittance to) paradise (and they will not be admitted in the beginning with those who have succeeded). They are: the habitual drunkard, one who is disobedient to parents, and the cuckold who connives at his wife (and womenfolk) committing illicit sexual intercourse."

COMMENTARY: The cuckold compels his wife and female slave, etc to commit sin with other men, or he connives at their being sinful with other men. This includes consuming wine, remaining impure without having a purifying bath. The cuckold does not make his wife stop drinking and he does not compel her to have a purifying bath. The cuckold is dayyuth in Arabic. The Majma-ul-Bahrayn says that he is also called Kash Khan, and qarnan. Some people differ and say that while the dayyuth tolerates other men's them to visit his wife, Kash Khan allows them to visit his sisters and qarnan permits them to go to his daughters. (According to steingass Persian-English Dictionary: Kash Khan is 'wittol' and qarnan is 'cornute'.)

3656. Sayyiduna Abu Musa Ashari (R) narrated that the Prophet (Sm) said, "three kinds of people will not enter paradise (initially): one who is a habitual drinker, one who severs ties of relationship and one who believes in sorcery."

COMMENTARY: The one who believes in sorcery believes that magic is effective by itself, otherwise it is proper to believe that sorcery is something, for it is created by Allah Himself. It works at Allah's command as stated: (sorcery is a fact).

LIKE IDOL-WORSHIP

3657. Sayyiduna Ibn Abbas (R) narrated that Allah's Messenger (Sm) said, "One who is addicted to wine will, on his death, meet Allah the Exalted like an idol-worshipper."

3658. Sayyiduna Abu Hurayrah (R) also narrated it.

3659. Sayyiduna Muhammad ibn Ubaydullah (Rh) also narrated it from his father. Bukhari (Rh) also narrated it in his Tarikh from Muhammad ibn Abdullah (Rh) from his father, as Bayhaqi (Rh) said.

3660. Sayyiduna Abu Musa (R) (Ashari) said, “I find no difference (at all) between consuming wine and Worshipping this pillar (meaning the idol of stone) instead of Allah.”

COMMENTARY: Abu Musa (R) means to say that consumption of wine and idolatry are sins of identical degree.

KITAB UL-IMARAH WA AL-QADA

EMIRATES & JUDICIARY

(OFFICES OF THE AMIR OR RULER AND OF THE JUDGE)

The word Imarah (emirate) means ‘chieftanship and rule.’ The word qada means ‘judiciary under shariah.’ These are the two basic pillars of the Islamic government. The amir and imam (who is the head of the government) is the preserver of the basic laws of Islam. He is responsible for running the government and for enjoining the reputable and forbidding the disreputable. He is the trustee of the religion and the strength of the ummah of Islam. He oversees the general affairs of the state. He has an authority over the matters of concern to the members of the Islamic society.

The qadi (judge) is the chief of the judiciary. He is the preserver of the rights of the citizens. He is the final authority on behalf of Shariah to decide cases and his main responsibility is to decide, on the basis of Shariah, the disputes between people. And his duty, greater than that, is to respect justice, fairness and honesty in every case.

ISLAM & GOVERNANCE

Islam is the world’s unparalleled religion and also its most great power. It is the last and most perfect code of law of guidance for the success of mankind. It is also the eternal political power that dispenses its authority for the overall good of mankind and their general administration.

Islam is not merely a religion but as a religion is concerned with governance, rule politics and the state as with any significant

reality. It is not what merely corrects the internal affairs but as a religion it lays claim to authority over the world's material life too. This is why the Quran the source of Islam's conceptions and theories, and the ahadith that are the explanations of the Quranic guidance, establish the relationship of Islam and the government, sometimes through history, sometimes through education and sometimes by recalling the blessings of Allah.

The earth belongs to Allah who has the right rule over it. So, one of the basic objectives of Islam is that Allah's rule should be established on earth and His law should be enforced. Those of us who are obstinate and bull-headed wish to separate religion and politics and thereby to keep Islam away from politics and government with no concern for them. They have succumbed to the tactics of elements who oppose Islam but who themselves have been unable to keep the state aloof of religion. However, they are bent on preventing the Muslims from marching ahead in politics. So they have created a conception of separate entities of religion and politics. Thereby, they have poisoned Muslim minds and thought with their filthy ideas.

The initial ahadith of this Book of Al-Imarah wa al-Qada bear out that Islam and government with politics are not two diverse subjects. These ahadith make clear that government and politics are part of Islam's sphere and they give ample guidance concerning the amir (or ruler, chief), the Khalifah (caliph), the qadi (judge) and sub-judges, the masses and subjects, the state and the army, and the different fields of administration and governance. These ahadith provide guidance and commands about them.

OBEDIENCE TO AMIR IS OBEDIENCE TO ALLAH & HIS MESSENGER (Sm)

3661. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "Whoever obeys me has obeyed Allah, and whoever disobeys me has disobeyed Allah, whoever obeys the amir has obeyed me, and whoever disobeys the amir has disobeyed me. The imam is merely a shield behind whom fighting takes place (on his orders and strength) and protection is sought (from the enemy). If he enjoins (piety and) fear of Allah and dispenses justice, then he will earn a reward for that. But, if he enjoins otherwise, then he will bear the burden (of sin)."

COMMENTARY: The imam (ruler of the state) is a shield in the sense that like a shield that keeps arrows and swords away from the body, so too the imam keeps the enemy at bay.

A SLAVE WHO IS AMIR MUST BE OBEYED

3662. Sayyiduna Umm Al-Husayn (R) narrated that Allah's Messenger (Sm) said, "If a slave with a slit nose and a cut ear is made your ruler and he goes by the Book of Allah (in leading you) then listen to him and obey him."

COMMENTARY: This hadith emphasises the importance of obeying the ruler. The relevance of the slave makes it more emphatic. It is like the Prophet's (Sm) saying, "If anybody builds a mosque even like a birds nest...." Clearly a mosque is never like that. So, the Prophet (Sm) only meant to emphasise the importance of building mosque: how excellent and meritorious it is! In this case too it is to show how important it is to obey the ruler. Otherwise, it is not allowed to make a slave an amir or an imam (meaning, head of state). He may become an assistant of the head of state.

Hence, it must be remembered that in all these ahadith the same interpretation will apply as mention a slave as the head of state.

The same explanation is made about a split nose and ear. It means that the ruler should be obeyed howsoever he is personally of a low rank.

3663. Sayyiduna Anas (R) narrated that Allah’s Messenger (Sm) said, “Listen (to the command) and obey (what your ruler enjoins and forbids) even if an Ethiopian slave with a (small) head like a raisin is made your ruler.”

RULER MUST NOT BE OBEYED IF HE COMMANDS DISOBEDIENCE TO ALLAH

3664. Sayyiduna Ibn Umar (R) narrated that Allah’s Messenger (Sm) said, “To hear and to obey (his commands) are incumbent on a Muslim in what he likes and what he dislikes, as long as he is not commanded to commit sin. So, when a command is given (by the ruler) to do something sinful then he must neither hear nor obey.”

COMMENTARY: It is binding on every Muslim to need and obey what the ruler says whether it is to his liking or not, provided the ruler’s command does not contravene the limits of Shariah. When he gives such a wrong command, it must not be obeyed but, even in this case it is not allowed to rebel against him.

3665. Sayyiduna Ali (R) narrated that Allah’s Messenger (Sm) said, “There is no obedience (to a command from the ruler, parents, teachers, religious mentors, etc.) If it calls to disobedience (or sin). Obedience is binding only in what is pious and reputable.”

PROMISE TO OBEY

3666. Sayyiduna Ubadah ibn Samit (R) said, “We aware allegiance to Allah’s Messenger (Sm) (promising to observe these things:)

1. To hear (his instruction and in all conditions) to obey (his commands) in time of difficulty and time of ease, in happiness and in sorrow.
2. If others are preferred over us (we shall show patience)
3. not to dispute with authority about the commands
4. to speak the truth (and what is right) wherever we be (and hi whatever situation)
5. and we shall not fear anyone who blames us whatever he says in our works for Allah’s sake (in religious affairs and in speaking truth).”

According to another version: “Not to dispute with authority about the commands” (and the Prophet (Sm) said:) “unless you have an evidence from Allah” (like a verse of the Quran or a hadith and which is not subject to an alternate interpretation in such cases, it is allowed to reproach the authority).

COMMENTARY: According to a tradition, the Prophet (Sm) had forewarned the ansars that after him, other people would be given preference over them. He had instructed them to show patience when that happened. Indeed, this did happen after the righteous caliphs. When the arrurs ruled they gave the slip to the ansars so they kept their promise and tolerated the injustice without making any complaint.

As for the promise not to dispute with the authority about the command(s), it implies ‘we shall not crave for rule and government and whoever is made our amir, we shall not depose him nor rebel against him.’ However, the concluding

words of the tradition say explicitly that if the words and deeds of the ruler smack of disbelief then it is allowed to depose him and he may not be obeyed.

The question whether an imam and a qadi may be deposed if he is a sinner is as: Imam Shafii (Rh) holds that he must be deposed but Imam Abu Hanifah (Rh) says that he cannot be deposed for that reason. Also, Imam Shafi (Rh) contends that he cannot be a guardian of anyone but Imam Abu Hanifah (Rh) says that he is eligible to be someone's guardian and a sinning father may give off his minor daughter in marriage.

OBEDIENCE ACCORDING TO ABILITY

3667. Sayyiduna Ibn Umar (R) narrated that whenever they pledged allegiance to Allah's Messenger (Sm) to hear (his words of guidance carefully) and to obey (his commands), he would say to them: In that which you are able."

COMMENTARY: The Prophet (Sm) gave concession to the Sahabah (Prophet's Companions) (R) to hear and obey to the best of their ability. They must not lag behind in that.

DO NOT SEPARATE FROM THE UMMAH EVEN A BIT

3668. Sayyiduna Ibn Abbas (R) narrated that Allah's Messenger (Sm) said, "If anyone finds in his amir something that he does not approve (from the point of view of Shariah or naturally), then he must exercise patience. (He should not rebel against the amir) for if anyone separates from the community a span's distance and dies (without making a repentance) then he dies the death of the people of the jahiliyah (ignorance period)."

COMMENTARY: The people of the pre-Islamic era were unconcerned with religion. They did not obey their amir

or their imam. Rather, they openly absolved themselves of all responsibility to their leaders. They had no concept of a community and togetherness. This hadith teaches us that Islam calls for a unified ummah, togetherness of the Muslims, a strong reliance on the leadership and obedience to the leaders and unity in affairs of the community. These things are essential to religion and for its strength.

PARTISANSHIP HAS NO PLACE IN ISLAM

3669. Sayyiduna Abu Hurayrah (R) narrated that he heard Allah's Messenger (Sm) say, "If anyone gives up obedience (to the ruler) and separates from the community (of Islam) and dies (in that condition) then he dies the death of the people of the jahiliyah (ignorance period). If anyone fights under a banner whose cause is not clear whether right or wrong and he is in a rage in favour of partisanship, or gathers people to factionalism, or promotes the cause of partisanship, and is killed (in the process not concerned with propagation of religion) then he dies the death of the people of the jahiliyah (ignorance period). If anyone comes out against my people with a raised sword killing the pious and the evil not sparing those who are believers (giving no thought to how grave it is to kill them) and (not sparing) those who observe covenants that have been agreed upon (not respecting these covenants), then he does not belong to my ummah (and is not among those who pursue my path) and I have no concern with him."

THE BEST & THE WORST RULERS

3670. Sayyiduna Awf Ibn Maalik (R) narrated, "The best of your rulers are they whom you love and they love you. You pray for them and they pray for you. (This creates a mutual nearness and kind relationship.) And, the worst of your rulers

are they whom you despise and they despise you. You invoke curse on them and they curse you.”

He (Awf (R)) said that they (meaning, the sahabah (Prophet’s Companions) (R) asked him,; O Messenger of Allah, in that case, shall we revoke the promise made to them? (Shall we depose them?)” He said, “No! Not as long as they establish the salah (prayer) among you. No! Not as long as they establish the salah (prayer) among you. Beware! If one has a ruler over him and he observes him come up with an act of disobedience to Allah, then he must detest the act of disobedience to Allah, but must not take away his hand from obedience to him.”

COMMENTARY: The hadith makes us understand that if the head of state which is Islamic does not offer salah (prayer) then it makes it binding to revoke the promise and covenant of faithfulness and obedience to him. If he perpetrates a clear act of disbelief then the Muslims may revoke their promise of fidelity to him and depose him. So, If he gives up offering salah (prayer), he deserves the same treatment and may be deposed, because salah (prayer) is a pillar of religion and it distinguishes Islam from disbelief. In contrast, other sins are not as grave as neglect and abandoning of salah (prayer), so if a ruler perpetrates them then it does not call for revoking the promise to obey him. This saying of the Prophet (Sm) sounds a serious warning against abandoning salah (prayer).

RESPONSIBILITY OF MUSLIMS TO EXPRESS DISAPPROVAL OF RULER’S WAYWARDNESS

3671. Sayyidah Umm Salamah (R) narrated that Allah’s Messenger (Sm) said, “You will have over you rulers whom you like and whom you dislike. He who speaks out what he disapproves (openly declaring what he does not accept) will be absolved (of hypocrisy and abetment). He who hates

(in his heart but does not muster courage to declare openly) will be safe (from reckoning about it). But, he who is pleased (at heart and abides by the rulers in committing wrong) and follows them (will share the sin and punishment)... They said, "Shall we not fight with them?" He said, "No! Not as long as they offer salah (prayer). No! Not as long as they offer salah (prayer)," meaning, he who considers it bad in his heart and rejects it in his heart.

COMMENTARY: Shaykh Abdul haq Muhaddith (prescribed punishment) Dahlawi (Rh) says that the last words of the hadith are the narrator's to explain 'He who hates will be safe/ But, Mulla Ali Qari (Rh) says that the narrator there by expounds both sentences 'He who disapproves and speaks out,' and 'he who hates...'

RULERS WHO WILL TAKE AWAY THE BEST THINGS

3672. Sayyiduna Abdullah ibn Masud (R) narrated that Allah's Messenger (Sm) said to them, "You will see, after me, partiality against you, and other things that you will not approve." The Sahabah (Prophet's Companions) (Sm) asked him, "O Messenger of Allah, what do you command us to do (against them)?" He said, "Give them their rights. And ask Allah for your rights."

COMMENTARY: If your rulers deny you your rights, you must nevertheless continue to give them their rights. You must obey them and remain their supporter and helper. Exercise patience and pray to Allah to compensate you.

3673. Sayyiduna Wail ibn Hujr (R) narrated that (Sayyiduna) Salamah ibn Yazid Jufi (R) asked Allah's Messenger (Sm), "O Prophet of Allah, what do you command us to do if such rulers

rule over us as compel us to give them their rights but deny us our rights?" He said, "Listen (to them) and obey (them), for only they will carry their burden (of dispensing justice and giving rights of their subjects) and you will carry your burden (of obeying them)."

COMMENTARY: The hadith apportions responsibility of the ruler and of the subjects. Each has to fulfil the responsibility on their shoulders irrespective of whether the other is dutiful or derelict.

WARNING TO ONE WHO CEASES TO OBEY IMAM

3674. Sayyiduna Abdullah ibn Umar (R) said that he heard Allah's Messenger (Sm) say, "If anyone withdraws himself from obedience (to the ruler of the Islamic state) then he will meet Allah on the day of resurrection without possessing any evidence (of faith). And if one dies without an oath of allegiance to the (true) imam, then his death will be like the death of (the people of) jahiliyah (ignorance period)."

REJECT A CLAIMANT TO CULERSHIP WHEN ONE IS ALREADY RULING

3675. Sayyiduna Abu Hurayrah (R) narrated that the Prophet (Sm) said, "The Banu Isra'il were taught, trained and guided by the Prophets (Sm). Whenever one Prophet died another Prophet took his place (and in this way the Prophets (Sm) succeeded each other). There will be no Prophet after me, but, there will be Khulafa (Caliphs), many of them." They asked, "What do you command us to do (if there are several claimants at one time)?" He said, "Fulfil the oath of allegiance to the first, (and after him) the first land if more aspire for the office, obey the first of them who takes over and reject the others). Give

them their rights. Surely, Allah will Himself question them about what He has entrusted them with (of the responsibilities).

COMMENTARY: The caliph who is appointed first must be given his right and each is called 'the first' in respect of the one who succeeds him. Oath of allegiance must be given to each in the same sequence as one succeeds the other. If more than one lay claim to the office, swear oath of allegiance to the first and reject the others as those hankering for power. The next hadith confirms it.

Give the rights of the ruler even if he does not give you your rights. In the next world, he will be made to make amends for his faults here and will be punished for that.

3676. Sayyiduna Abu Sa'eed Khudri (R) narrated that Allah's Messenger (Sm) said, "When allegiance is pledged to two caliphs, kill the second of them."

COMMENTARY: If a second person lies claim to the first is in office, and begins to seek oath of allegiance for himself, then fight with him till he mends his ways and submits to Allah's command of respecting the first caliph, or is killed. This is necessary because he rebels against Allah's commands. A rebel must submit or be killed.

Some authorities say that 'Kill him' implies that those who have pledged allegiance to him must revoke their pledge and make him weak and unsupported so that he is unable to spread mischief against the caliph.

KILL HIM WHO CREATES DISCORD

3677. Sayyiduna Arfajah (R) narrated that he heard Allah's Messenger (Sm) say, "Soon mischief and corruption will arise. So, strike with sword him who plots to disintegrate this ummah when they are united, be he anyone (whosoever)."

COMMENTARY: With passing of time, the enemies of religion will intensify their mischief. They will employ various tactics to cause dissension in the ranks of the Muslims. Leadership is man's greatest weakness and he tries to seize it. So, some Muslims fall prey to the conspiracies of the enemies and go to extremes to oust the ruler and take his place. The result is a total collapse of law and order and spread of Unrest with a rise of factions among the ummah.

In these circumstances, the Muslims must not cease to remain with the first leader whom they had instated originally, and must resist mischief among their ranks. To maintain their unity, they must not, hesitate to eliminate anyone who sows seeds of discord. He may be a great scholar too, seemingly a great Shaykh and honourable man. In fact, the ulama (Scholars) say that if the claimant is more deserving than the present ruler, even then he must be killed because he deserves to be eliminated being the cause of division in the ummah. Of course, there is a proviso that the present ruler is worthy of his responsibilities as ruler and there is no valid reason to depose him.

3678. Sayyiduna Arfajah (R) narrated that he heard Allah's Messenger (Sm) say. "If anyone comes to you (as a rebel to overthrow your ruler) while you are united under one man (as your Khalifah) and he intends to split your Khalifah) and he intends to split your care, or cause division in your community, then kill him."

COMMENTARY: The unity of the Muslims is spoken of as a "care" and division in their ranks as "splitting the cane".

The next words 'and cause division in your community' are perhaps interjected by the narrator to expound the preceding. But, if they are spoken by the Prophet (Sm) then the first

phrase could refer to worldly affairs and to weakening the political strength of the Muslims, and this second phrase to their religious unity being disturbed.

3679. Sayyiduna Abdullah ibn Amr (R) narrated that Allah's Messenger (Sm) said, "If a person pledges allegiance to an imam (ruler) by giving him his hand to promise obedience and fidelity with sincere submission in his heart, then he must obey him as much as he can. If another man appears (declaring himself as imam) and rebels against the imam then sever his contender's neck."

DO NOT SEEK RULERSHIP

3680. Sayyiduna Abdur Rahman ibn Samurah (R) narrated that Allah's Messenger (Sm) said to him, "Do not ask for the office of the ruler because if you are given it on your asking (for it), then it will be entrusted to you to run it yourself (while that is very difficult for anyone to handle without help). But, if you are given it while you have not asked (for it), then you will be helped (by Allah) to run it (smoothly and justly)."

3681. Sayyiduna Abu Hurayrah (R) narrated that the Prophet (Sm) said, "You will be keen to get the position of a ruler. But, on the day of resurrection, it will turn out to be a cause of regret. How excellent a provider of milk but how bad a weaner!"

COMMENTARY: The office of the ruler is said to begin as a wet nurse who suckles but to end as a woman who stops suckling. So the assumption of rulership seems very good and pleasing but when the inevitable death comes and the office is surrendered, it feels very bad. Hence, it is not proper to be keen to get the relish which ends as regrettable.

3682. Sayyiduna Abu Dhar (R) narrated that he submitted "O Messenger of Allah, why do you not make me governor (of

some place? He added that he patted him on his shoulder and said, "O Abu Dhar, you are weak while this (governorship) is a trust (from Allah concerning rights of fellow-men). This will be a cause of embarrassment and regret on the day of resurrection, except for one who assumes it and handles it right fully to give the dues of the right-holders (namely, his subjects)."

According to another version, the Prophet (Sm) said to him, "O Abu Dharr, I find you weak (so that you will not be able to shoulder responsibilities of the office of governor). And, I like for you that I like for myself. Do not become ruler over even two people and do not act as guardian of an orphan's property.

COMMENTARY: By saying, "I like for you what I like for myself," the Prophet (Sm) made it clear that if he was weak like him, he would not have shouldered the responsibilities of leadership. But, Allah gave him enough strength and endurance. Without that, he would never have been able to take up the responsibility.

Imam Nawawi (Rh) said that this hadith is the greatest guide and advice that the responsibilities of government should not be accepted, particularly by the weak.

DO NOT HAND OVER OFFICE TO ONE WHO SEEKS IT

3683. Sayyiduna Abu Musa (R) said that he and two men from among the children of his paternal uncle visited the Prophet (Sm). One of them submitted, "O Messenger of Allah, appoint us as amir of some place from the territories over which Allah has made you leader." And, the other made a similar submission. He said, "By Allah, I shall not appoint over that work anyone who asks for such appointment and also not anyone who is keen for the appointment."

According to another version, he said, “We shall not appoint in our work one (as a governor) who intends to get it.”

COMMENTARY: It was the practice of the Prophet (Sm) that he did not appoint an applicant to the post he applied for without being asked to do so. Desiring such appointment implies love for recognition. In the end it causes the seeker a disadvantage.

WHO REJECTS OFFER OF RULERSHIP IS THE BEST

3684. Sayyiduna Abu Hurayrah (R) narrated that Allah’s Messenger (Sm) said, “You will find him among the best of people who has the greatest of dislike of this office (of rulership) till he ends up in it.”

COMMENTARY: One who dislikes to take responsibility of leadership is the best of all people. But, if he does accepted it for some reason then in the end he too will be as regretful as is the fate of anyone else holding this responsibility.

Teebi (R) said that one who dislikes rulership is the best of all people. However, if he succumbs to the temptation and seeks to become a ruler then he will turn into the worst kind of people.

EVERYONE ANSWERABLE FOR HIS RESPONSIBILITY

3685. Sayyiduna Abdullah ibn Umar (R) narrated that Allah’s Messenger (Sm) said, “Know! Everyone is an overseen and (on the day of resurrection,) each one of you will be questioned about his subjects. So, the imam (ruler) over a people is their overseen and will be questioned about them. A man is an overseen over the dwellers of his house and will be questioned about them; a woman is an overseen over the house of her husband and his children and will be questioned about them. A man’s slave is an overseen over his master’s property and

will be questioned about it. Beware! Every one of you is an overseen and each one of you will be questioned about his subjects.”

COMMENTARY: The Arabic word raiyah is that which is under the care of a shepherd, a custodian or an overseen. The people of a country are the subjects of the rulers of that country and are called his ra’iyah because they are under his care. Hence, the hadith is a supervisor or an overseen or a shepherd. The ulama (Scholars) go so far as to say that every person is an overseen of the sense organs of his body. These organs are his subjects. So, on the day of resurrection, every person will be questioned about his sense organs and will be asked, “How did you use them? And, where? This has not been included in the hqadith because it is very evident.

WARNING TO THE TREACHEROUS TO THE OPPRESSOR

3686. Sayyiduna Ma’qil ibn Yasar (R) narrated that he heard Allah’s Messenger (Sm) say, “If anyone who rules over the Muslim subjects dies while he was treacherous (and oppressive) towards them, then Allah will forbid to him (entry into) paradise.

COMMENTARY: The words that Allah will forbid to him paradise could mean that he will not earn admittance at the initial stage with the successful ones, or he will not be admitted because he considered treachery and oppression as lawful, or the Prophet (Sm) spoke these words to deter rulers from cheating and oppression

RULER UNMINDFUL OF WELFARE OF SUBJECTS WILL NOT SMELL FRAGRANCE OF PARADISE

3687. Sayyiduna Ma'qil ibn Yasar (R) narrated that he heard Allah's Messenger (Sm) M say, "If anyone is made by Allah to oversee the subjects (having made him their ruler) and he is not well-wishing to them in caring for them then he will not smell the fragrance of paradise.

COMMENTARY: He will not smell the fragrance of paradise with those who do smell it though it is perceived at a distance of five hundred years of journey. Or he will not smell it with the successful people. But, if he dies as a disbeliever regarding his doings to be lawful then he will never get the fragrance of paradise.

OPPRESSOR OF SUBJECTS IS THE WORST OF RULERS

3688. Sayyiduna Aaidh ibn Amr (R) narrated he heard Allah's Messenger (Sm) say, "The worst of the chiefs (or rulers) are they who are merciless and rough. (The phrase translated "they who are merciless..." is Lanes Lexicon translates thus: "the worst of pastors is the ungentle that causes beasts to crush, or bruise, one another.") (Book I Part 2 P.594.)

3689. Sayyidah Ayshah (R) narrated that Allah's Messenger (Sm) prayed, "O Allah cause distress to him of authority over my ummah who causes them distress. And be mild to him of authority over my ummah who mild to them.

GREAT RANK OF JUST RULER

3690. Sayyiduna Abdullah ibn Amr ibn Aas (R) narrated that Allah's Messenger (Sm) said "Indeed, the just rulers will be near Allah on pulpits of nur (light) to the (side of the) right

hand of Ar. Rahman. And, both His hands are right. They (the just rulers) are those who are just in their commands towards their people and the affairs that are under their charge.

COMMENTARY: When a man is honoured he is offered to stand or sit on the right side. So, this is a figurative manner of conveying the honour and high standing of a just ruler. In order that there should be no confusion about hands being ascribed to Allah, it is stated that both hands of Allah are right. Thus no one may presume that the right hand is mentioned against the left, which is comparatively weak. Obviously, Allah is without any kind of weakness and shortcoming.

It must also be remembered that attributing a hand to Allah is merely a metaphoric speech. Only Allah knows the true meaning of this, but it seems to represent strength. These just rulers are fair and just in dispensing all affairs concerned with government and rule. They discharge these duties honestly and fairly. They do not fail to give the rights of all those who are under their influence or authority, like members of their own family or their subjects. They deal with them with full justice.

Their field also covers all affairs entrusted to them and under their charge, like the rights of the orphans and the poor, the trust properties, and so on.

A true wise man has said that man must be just to his own self too. He must not waste his time in such occupation as is not prescribed by Allah. He must spend all his time in things that are a means to earning Allah's pleasure, in fulfilling his duties to his fellow creatures, in obedience to Allah and in keeping away from the forbidden things. This is what the awliya (friends of Allah) and men of Allah do. Or, he may occupy himself in such things as keep the righteous believers busy.

TWO COMPANIONS WITH EVERY RULER

3691. Sayyiduna Abu Sa'eed (R) said, "Allah has sent no Prophet and has appointed no Khalifah (Caliph) without each having two unseen companions. One unseen companion instructs him to pursue the reputable (good things) and exhorts him to it, and the other unseen companion instructs him to pursue evil and exhorts him to it. And, the innocent one is he whom Allah protects (from sin)."

COMMENTARY: The two unseen companions are the angel and the devil. They keep together with man. The angel exhorts him to good work but the devil tempts him to do bad. The innocent are the Prophets (Sm), the righteous Caliphs (R) and some other caliphs and rulers. Allah has kept them safe from the devil's mischief. The two companions may also be the advisers and assistants who keep constant company of the caliphs. They are called bitanah. Hence, the advisers who were with every Prophet and caliph had different views. Or, they had two groups of men whose opinions, differed. This is normally observed with heads of states, chiefs and governors and sometimes their view points are poles apart, at opposite extremes and incompatible. Some who are good offer sound advice and exhort to what is good, but the bad natured people try to mislead their leader. But, Allah saves him from evil course whose He wishes.

PROPHET'S (Sm) CONSTANT ATTENDANT

3692. Sayyiduna Anas (R) narrated that (Sayyiduna) Qays ibn Sa'd (R) was in attendance with the Prophet (Sm) like an escort is with an amir.

COMMENTARY: Sayyiduna Qays ibn Sa'd (R) was constantly in the company of the Prophet (Sm). He implemented and forwarded the commands and directions of the Prophet (Sm).

Here, we reproduce a relative passage from 'The Life of Muhammad (Sm) by Ibn Kathir (R).

QAYS IBN SA'D (R) ANSARI, KHUZRAJIA (R)

Bukhari has reported from Anas (R) that the position of Qays (R) with the Prophet (Sm) was exactly what a police officer is in the eyes of an ameer. He was a very tall man and had a very thin beard. The tallest of men would be covered up to his nose if he were to wear the trousers of Qays (R). Ameer Mu'awiyah (R) sent his trousers to the ruler of Byzantine asking him. "Do you have such a tall man?" The king was dumbfounded.

Qays (R) was very kind and generous, wise and of sound judgement.

In the Battle of Siffin, he took the side of Sayyiduna Ali (R). Qays (R) kept his index finger raised and made supplication continuously. He died during the last days of Ameer Mu'awiyah (R) Khilafah (caliphate).

Bazaar reported from Anas (R) that twenty young men of the Ansar always stayed around to respond to the Prophet (Sm) whenever he needed them. He would send them where they were needed.

WOMAN RULER IS IN AUSPICIOUS FOR HER PEOPLE

3693. Sayyiduna Abu Bakrah (R) narrated that when Allah's Messenger (Sm) was informed that the citizens of Persia had enthroned Kisra's daughter as their queen, he said, "The People

who entrust their affairs of government to a woman shall never prosper.”

COMMENTARY: It is clear from this hadith that only man is eligible to lead and rule. A woman may not act as head of state or governor.

DO NOT ABANDON THE COMMUNITY

3694. Sayyiduna Harithi Ashani’s (R) narrated that Allah’s Messenger (Sm) said, “I command you to observe five things: to remain attached to the community, to hear, to obey, to make hijrah (which is to emigrate) and to wage jihad in Allah’s path. If anyone separates from the main body even by a span, he takes off the rope of Islam from his neck unless he returns to it. And, if anyone invites (the people) to the beliefs of the people of jahiliyah (ignorance period) then he is a member of the communities of hell, even if he fasts, offers salah (prayer) and declares that he is a Muslim.”

COMMENTARY: To emigrate is to move out of enemy territory and settle in Islamic land. Or, if he lives in a city or country whose inhabitants are bidatis (innovators) then he must get out of that place and come to one where (true) sunnah (Prophet’s (Sm) practice) is practiced. In the same way, hijrah is also to abandon sin and disobedience and make repentance and seek forgiveness of Allah. This is in the light of the saying of the Prophet (Sm):

(The emigrant is he who abandons what Allah has forbidden to do).

The command to wage jihad is to fight with the enemies of Islam and the disbelievers to propagate Islam and raise aloft its banner and to enforce Divine law in the land. It also means

to suppress the desires of the soul and to deny them to it, for, nothing is more harmful to man than the enmity of his self.

“If anyone separates from the main body...’ This part of the hadith means that if a Muslim abandons what the entire community observes, then he is like one who absolves himself of obedience to Islam, even if he abandons that to a very minute degree. He cedes his responsibility that was Wajib (obligatory) on him as a Muslim. It also means that Islam has nothing to assure him of. However, if he repents, then he will return to the folds of Islam as an obedient member.

Whose sounds the call of the jahiliyah (ignorance period) is one who calls for the customs and rites of the jahiliyah (ignorance period) to be re-introduced. He becomes instrumental in causing the people to adopt beliefs and convictions contrary to Islam. Some scholars interpret it to mean that he summons people to help him at the time of an accident or attack in the same manner as pre-Islamic people did. They used to call out, “O family of so-and-so! O family of so-and-so!” At that, they would hurry and come to his aid even if he was an oppressor.

THIN GARMENTS NOT SUITABLE FOR AMIR

3695. Sayyiduna Ziyad ibn Kusayb (Rh) Al-Adwi (Rh) said, “I was sitting with Abu Bakrah (R) at the foot of the pulpit of Ibn Aamir (R) who was delivering a sermon wearing thin garments. Abu Bilal (Rh) (a tabi’i) remarked, ‘Look at our amir wearing garments of the sinners!’ Abu Bakrah (R) interrupted him. ‘Quite! I had heard Allah’s Messenger (Sm) say that if anyone humiliates Allah’s ruler on earth then Allah will humiliate him.”

COMMENTARY: Perhaps Ibn Aamir (R) had worn what is unlawful for men to wear like silk. Abu Bakrah (R) prevented

Bilal (Rh) from insulting the amir lest discord was created among Muslims.

It is also possible that the amir was wearing very costly and very thin clothes similar to what the highly luxurious people wear. The ascetics and the worshippers shun such garments. This is why Abu Bilal (Rh) described them as clothing of the sinners. Some mystics, or those who have an intimate knowledge of Allah, say:

(He whose clothing is thin textured makes his religion too very dilute and thin)

DO NOT OBEY RULER'S COMMAND TO SIN

3696. Sayyiduna Nawwas ibn Samah (R) narrated that Allah's Messenger (R) said, "There is no obedience to the creatures in what calls for disobedience to the creator."

COMMENTARY: If any of the creatures, even a king, ruler or amir, gives a command that calls for doing something that contravenes Allah's command then it must not be done, and the creature must not be obeyed. But, if a person is compelled to obey such a command then there is no sin on him.

THE FINAL TREATMENT OF THE RULER

3697. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "Every ruler, even if he has ruled over ten people, will be brought on the day of resurrection with a chain on his neck till justice relaxes his chain (loose) or oppression ruins him."

COMMENTARY: Every ruler, just or unjust, will necessarily be brought in shackles before the Mighty lord. If he was just

then he will be released, but if proved unjust then he will be punished.

RULERS WILL BE REGRETFUL ON THE DAY OF RESURRECTION

3698. Sayyiduna Abu Hurayrah (R) narrated that Allah's Messenger (Sm) said, "Alas for the rulers! Alas for the overseers! Alas for the trustees! Many people will sigh and yearn that their forelocks had been tied to the Pleiades leaving them suspended between heaven and earth, and (yearn) that they had never been given authority."

Another version has this addition: "(will yearn) that their loose hair had been tied to the Pleiades pulling them up and down between heaven and earth and (will yearn) that they had never been governors over anything."

COMMENTARY: The word wayl means 'woe to you!' 'Alas!' 'How I wish!' It is spoken when one is grieved and is an expression of sigh.

It is also said that wayl is valley in hell. The infidel will be dropped into it but will continue to fall for forty years but not reach its bottom.

The trustee (or amin) is one whom the ruler has appointed over (receipts and payments of) charity and Kharaj (homage revenue). Or, he is appointed to handle other revenue of the Muslims. Or, someone other than the ruler may have appointed him to take care of his properties.

Pleiades is star cluster about 370 light years away.

Those people would prefer to have been disgraced in the world rather than undergo the severity of reckoning in the next world.

The message of the hadith is that a ruler must dispense justice because there is great reward in that. Besides, that would save them from disgrace in the hereafter. Thus, it is clear why sympathy is offered to rulers, overseers and trustees. They generally are liable to fail in honestly discharging their duties. There are, however, exceptions whom Allah protects and guides.

CHIEFS MOST LIKELY DISTINED TO HELL

3699. Sayyiduna Ghalib ai-Qattan (R) reported from a man who from his father, from his grandfather that Allah's Messenger (Sm) said, "The need of a chief is real. And certainly, there ought to be chiefs for the people. But, the chiefs will go to hell."

COMMENTARY: Of course, chiefs are a necessity to sort out affairs of the people and to administer them. People and to administer them, people need them and have recourse to them.

However, it is a fact that most of them will go to hell, because they will not be just and honest. In this sense, it is a very bad bargain to accept the office of a chief. It is a very risky thing, so the intelligent must be cautions. He must, as far as possible, refrain from accepting this office lest he fall into sin and become liable to go to hell.

SEEK REFUGE IN ALLAH FROM A FOOLISH LEADER

3700. Sayyiduna Ka'b ibn Ujrah (R) narrated that Allah's Messenger (Sm) said to him, "I place you in Allah's protection from the foolish rulers." He asked. "What is that, O Messenger of Allah? He enlightened him, "There will come after me, chiefs (foolish and liars and cruel). He who goes to them and takes their lie as true and will assist them in their oppression (by

word of mouth and by deed), (is not mine and) has nothing to do with me and I have nothing to do with him. (I do not like his doings and I am fed up with the likes of him.) People like him will not come to me at the Pond (the hawd). As for him who does not corroborate their falsehood as true and does not assist them in their oppression, he belongs to me and I belong to him and such people will come to me at the hawd.”

COMMENTARY: The Pond or hawd refers to hawd Kawthar. “These people will not be permitted to come to me at hawd Kawthar. It could mean ‘paradise.’ “They would not be allowed to come to me in paradise.”

This is a strict warning I anyone becomes a member of such a government, helps and supports them while it is run by foolish people who oppress Allah’s creatures then it is a sign that this man lacks faith and he does not deserve to be called a Muslim.

NEARNESS TO A RULER GETS ONE AWAY FROM ALLAH

3701. Sayyiduna Ibn Abbas (R) narrated that the Prophet (Sm) said. “He who resides in the desert is harsh and unfriendly. He who pursues game is careless and neglectful. And, he who visits the ruler is led astray.”

According to a version: “He who associates himself with a ruler is led astray. And the nearer a man gets to a ruler the farther he goes from Allah.”

COMMENTARY: The hadith does not mean to belittle the villagers or desert dwellers. Rather, since they do not get the company of the scholars, the pious and the men of Allah (awliya), they are hard-hearted. They lack knowledge, Divine awareness and understanding.

If anyone persistently occupies in hunting as a hobby then he is slack in obedience worship and offering salah (prayer) on Friday and with the congregation. Also, he lacks compassion and friendliness.

In other words this refers to those who constantly engage in hunting as a playful pursuit and not with the objective to procure a lawful subsistence, they spend most of their time in hunting for pleasure. Apart from that, there is no doubt whatsoever that hunting is permissible and lawful. Some of the sahabah (Prophet's Companions) (R) had, indeed, engaged in hunting. However, the ulama (Scholars) assert that the Prophet (Sm) never engaged in hunting himself but, at the same time, he never disallowed anyone to hunt game.

If anyone visits the rulers unnecessarily then he will invite trouble. If he emulates their deeds that contravene Shariah then he puts his religion at risk. But, if he contradicts them, then he puts his worldly life at stake. Mazhar (Rh) says that if anyone goes to a king and follows their practices (without trying to correct their he involves himself in irreligious conduct. If he does not do as they do but enjoins them piety and forbids evil, then his attendance in the king's (or ruler's) assembly will be more meritorious than participating in jihad.

Dahlawi (Rh) has presented in Musnad Firdaws'a hadith of Sayyiduna Ali (R) in a marfu form:

(He who increases his knowledge but does not expand his unconcern with the world truly increases his distance from Allah.)

ANONYMITY IS SOLACE WHILE RENOWN IS TROUBLESOME

3702. Sayyiduna Miqdam ibn Madikarab (R) narrated that Allah's Messenger (Sm) patted him on his shoulders and said, "You have succeeded, O Qudaym, if you do not become a ruler, a clerk or an overseer till you die."

COMMENTARY: This saying indicates that anonymity spells peace while limelight and fame bring trouble.

RULER WHO LEVIES UNJUST TAXES WILL BE DEPRIVED OF PARADISE

3703. Sayyiduna Uqbah ibn Aamir (R) narrated that Allah's Messenger (Sm) said, "The tax collector will not enter paradise." He is the one who impose or collects taxes or levies from people such as are not sanctioned by Shariah.

MERIT OF A JUST IMAM

3704. Sayyiduna Abu Saeed (R) narrated that Allah's Messenger (Sm) said, "The dearest of all men to Allah and the nearest of them in rank on the day of resurrection will be a just imam (ruler, leader), and the most despised of all men to Allah on the day of resurrection who will be awarded the harshest of punishment," or according to a version, "Who will be farthest from Him in rank will be a cruel (oppressive) imam."

CONVEYING TRUTH TO A TYRANT IS BEST JIHAD

3705. Sayyiduna Abu Saeed (R) narrated that Allah's Messenger (Sm) said, "Indeed, the mightiest of jihad is a just word before a tyrant ruler."

3706. Sayyiduna Tariq ibn Shihab (R) narrated the same hadith.

COMMENTARY: In jihad, the warrior may subdue the enemy or become a martyr but when he speaks a just word before a cruel king, he has no semblance of hope of saving his skin. In spite of that, he dares to speak out the truth leaving himself at the mercy of the oppressor. He discharges his duty of enjoining the reputable and forbidding the disreputable. Hence, it calls for more patience to do something that may cause him to lose his life and property than to do what might spare his life.

Moreover, the oppressive and unjust ruler is liable to hurt all his subjects and if he is prevented from being unjust then a large number of people will be benefited. The same thing cannot be said about fighting with the enemy.

THE WAY TO CORRECT THE EVIL MAN: Shaykh Abu Hamid (Rh) has written in *Ahya* that enjoining the reputable to a ruler is to stop him from his waywardness, must be told of his deeds that are wrong, unjust and cruel, of his commands that are unlawful and of his actions that are contrary to the codes of Shariah. However, strong words and approach must be adopted calling him cruel or 'one who does not fear Allah' only when other people are not likely to be punished along with the reproacher. If they are likely to suffer his wrath, then it is not allowed to speak to him strongly. If only the reproacher is likely to be punished then it is allowed to reproach him in strong words. Rather, it is *mustahab* (desirable) to do so. The predecessors used to chide the rulers severely because they knew that if their wrath resulted in loss of their life that would be a great honour for them in that they would thereby attain the rank of martyrdom in jihad.

RIGHTEOUS ADVISERS LEAD THE RULERS TO SUCCESS

3707. Sayyidah Ayshah (R) narrated that Allah’s Messenger (Sm) said, “When Allah decides that a ruler should have good, He lets him have a righteous minister and adviser. Is he forgets, he reminds him and if he remembers, he helps him. But, when Allah decides for him otherwise, He causes him to have an evil minister and adviser so that if he forgets, he does not remind him-and if he remembers, he does not help him.”

SUSPICION CAUSES UNREST IN SUBJECTS

3708. Sayyiduna Abu Umamah (R) said that the Prophet (Sm) said, “When a ruler tries to attribute mischief to the subjects, he corrupts them.”

COMMENTARY: The rulers and the ruled must have complete harmony among themselves for the sake of peace in their country. The ruler must assure his subjects that he is confident of them. If he entertains doubts and accuses them and punishes them because of that, then he creates unrest and bad feelings.

This hadith teaches rulers that they must not search for faults in their subjects and must conceal their faults. They must pardon them any lapses.

3709. Sayyiduna Muawiyah (R) narrated that he heard Allah’s Messenger (Sm) say, “If you look into the secrets of the people (to find their faults), then you will corrupt them.”

COMMENTARY: Like the previous hadith this too stresses that secrets should not be disclosed lest it becomes difficult to live peacefully.

3710. Sayyiduna Abu Dharr (R) narrated that Allah’s Messenger (Sm) asked him, “How will you conduct yourselves, after me

with the rulers who will retain the fat (booty) with themselves?" He said, "Indeed, by him who sent you with the truth, I shall put my sword on my shoulder and smite (them) with it till I meet you." He asked, "Shall I not guide you to what is better than that? Be patient till you meet me."

COMMENTARY: Fa'i is what is acquired from the disbelievers without fighting with them. Examples are Kharaj (tribute), jizyah (homage revenue) or any kind of tax which the Islamic state takes from the non-Muslims. As for the property acquired from the disbelievers after fighting with them, that is called ghanimah (booty). One fifth of the faT goes to the state treasury while four-fifth is the right of all Muslims and disbursed among them. If the ruler does not give anything of the fa'i to the Muslims then though he denies them their right yet, merely for this property, they must not revolt against him. It is better to show patience.

The ulama (Scholars) say that this saying of the Prophet (Sm) includes both faT and ghanimah. The ruler who appropriates all of faT or ghanimah (booty) is a wrongdoer, (fa'i is booty acquired without fighting. Ghanimah is booty acquired after defeating the enemy in war.)

MERIT OF A JUST IMAM (RULER)

3711. Sayyidah Ayshah (R) narrated that Allah's Messenger (Sm) asked, "Do you know who will be the first ones, on the day of resurrection, to the shade of (the throne of) Allah, Mighty and Glorious (or to His kindness and mercy)?" They (the sahabah (Prophet's Companions) (R) said, "Allah and His Messenger (Sm) know best." He said. "They (who will be the first) are the ones who accept when the truth is placed before them. When they are asked for something justified, they spend

without hesitation. And, they judge for the people as they judge for themselves.”

COMMENTARY: This hadith describes the just rulers as possessing three characteristics because of which they will be the first to deserve the favours of Allah and the shade on the day of resurrection. (1) they readily accept every proposal concerning the betterment of their subjects and justice towards them, and they put that into action promptly. (2) They give the rights of their subjects when they demand them, and they do not procrastinate in spending on the needs of the people and the good of them. And, (3) They like for their subjects what they like for themselves. Just as they wish for their own selves comfort, they wish comfort for their people, too. They are not like selfish rulers who do not care for the general masses.

FEAR OF THREE THINGS FOR THE UMMAH

3712. Sayyiduna Jabir (R) ibn Samurah (R) narrated, “I heard Allah’s Messenger (Sm) say, I fear three things for my ummah (lest they adopt them and go astray. They are): (i) seeking rain by al-anwa (the phases of the moon), (ii) a king’s being unjust and (iii) denying the decree of Allah.”

COMMENTARY: The word anwa (in the hadith with the definite article) is the plural of naw which means to ‘rise and fall’. Generally, it is used for the phases of the moon. The ancient astronomers said that the moon has twenty-eight phases. It is in a different phase every night. So, perhaps, ‘rise and fall’ are used for the rising and setting of the moon and the word anwa is used for the phases of the moon.

The Arab idolaters ascribed rain to these phases of the moon. This is a false belief and other ahadith forbid the holding of

such beliefs. It is called disbelief to emphasise the significance of tawhid (monotheism) and to remove doubts of polytheism.

DO NOT BECOME A TRUSTEE OR A JUDGE UNNECESSARILY

3713. Sayyiduna Abu Dharr (R) narrated that Allah's Messenger (Sm) said to him (every day) for six days, "Bear in mind, O Abu Dharr, what is to be told to you." (He was asked to prepare himself for a guidance to be given to him which he must remember and follow.) Then, on the seventh day, he said, "I instruct you to fear Allah in your secret affairs and the open ones. And, when you commit a wrong, follow it with a good deed. Do not ask anyone (of the creatures) for anything, even if your whip drops down (from your hand, do not request anyone to pick it up for you). Do not accept a trust and do not act as an arbitrator between two people."

COMMENTARY: To keep anyone's trust for safe-keeping is not wise. One cannot trust oneself and the devil may tempt one at any time to commit treachery. Besides, there is a possibility of being accused of breach of trust by the owner of the trust or anyone else.

THREE STAGES OF A RULER DURING HIS RULE

3714. Sayyiduna Abu Umamah (R) narrated that the Prophet (Sm) said, "If a man has ruled over ten people or more, then he will be brought to Allah, Mighty and Glorious, on the day of resurrection (in the place of gathering), with his hand chained to his neck. Then, he will be set free by his piety (which is his justice and kindness to his subjects in the world), or he will be ruined because of his sin (which is his tyranny over his subjects in the world). The beginning of it (meaning, ruler ship) brings

blame, the middle of it causes regret and the end of it is disgrace on the day of resurrection.”

COMMENTARY: Very few people there are who do not crave for high offices and ruler ship. In the initial stages, a ruler is blamed from all sides for misrule, partisanship, negligence etc. Then, he himself regrets having taken up the office and put himself to unnecessary bother. If he is deposed then he is disgraced otherwise he is despised. Then, in the hereafter, he will have to give account to the Judge of all judges and undergo punishment for his misdeeds. So take heed, O you possessed of sight!

PROPHET’S (Sm) ADVICE TO MUAWTYAH (R)

3715. Sayyiduna Muawiyah (R) said that Allah’s Messenger (Sm) said to him, “Muawiyah, if you are made a ruler or given authority, fear Allah (always) and dispense justice.” He said, “I continued to think that I would be tried with some kind of authority in the light of the Prophet’s (Sm) saying till I was (finally) tried. (His words did come true and I was made an amir.)”

REFUGE IN ALLAH FROM TRIAL IN FUTURE

3716. Sayyiduna Abu Hurayrah (R) narrated that Allah’s Messenger (Sm) said, “Seek refuge in Allah from the beginning of the year seventy and from the rule of boys.”

COMMENTARY: Beginning of the year seventy is the seventh decade of the hijri year which began in 61 AH. At the end of 60AH, Muawiyah (R) died and his era was over. Yazid ibn Mu’awiyah (R) began his rule. At the same time the auspicious era of the Sahabah (Prophet’s Companions) (R) came to an end completely.

Thereafter, the ummah's history is replete with discord, infighting, injustice and oppression and rivalry for rulership. Yazid ruled for three years and eight months and the most shameful tragedy during his rule was the very unfortunate incident at Karbala. After Zazid, his son, Mu'awiyah (R) Zazid ibn Mu'amiyah succeeded him only in name and rulership shipped out of the hands of the Sufyani clan of Banu Umayyah into the hands of Banu Marwan.

The hadith refers to these Banu Marwan as the boys. During their time, there was much of tug of war for rulership, oppression, religious unrest, ethnic wars, neglect of symbols of Islam and harsh treatment of religious elders. This turned the entire administration into children's playground. The most disgraceful man of history was the cruel Hajj (pilgrimage) aj ibn Yusuf, the prominent ruler of Banu Marwan. He did not lag behind Chengez and Halaku in his cruelty and tyranny.

The Prophet (Sm) had foreseen these troublesome years of the seventh decade of hijri which began with the rule of Yazid ibn Mu'awiyah (R) and reached their peak in the time of the Banu Marwan. His sight had seen them years before they transpired like a clearly read book. Therefore, he had advised his Sahabah (Prophet's Companions) (R) to seek refuge from that time and asked them to pray that Allah way not show them that period.

RULERS WILL BE APPOINTED COMMENSURATE TO YOUR DEEDS.

3717. Sayyiduna Yahya ibn Hashim (R) narrated from Yunus ibn Abu Ishaq (R) who from his father that Allah's Messenger (Sm) said, "As you will be so shall you have rulers put over you."

COMMENTARY: Your rulers and governors will be appointed over you according to how you are, how you conduct yourselves. If your deeds are good they too will be good. If you do bad deeds, then you will have evil leaders over you.

KING IS ALLAH'S SHADE ON EARTH

3718. Sayyiduna Ibn Umar (R) narrated that the Prophet (Sm) said, "The King is Allah's shade on the earth. Every wronged one of the slaves of Allah comes to it (to seek redress). So, when he is just, there is a reward for him and it is wajib (obligatory) on the subjects to be thankful. But, when he is oppressive sin rests on him and th'e subjects must exercise patience.

COMMENTARY: The King is said to be Allah's shade on earth. He is so called because people retire to the shade to get protection. The Kind protects his subjects from hardship and oppression, Also, sometimes the word shade stands for 'protection and support.' The words Allah's shade, denote the greatness of the shade and its blessings relative to other shades. It is like Bayt Allah - Allah's House. This House is greater and more blessed than other houses. It indicates that the particular shade, meaning King is not like other shades. Rather, it is more glorious and exclusive because the King is Allah's caliph (deputy) on earth.

THE HIGHEST RANK WILL BELONQTO. AMILD AND JUST RULER.

3719. Sayyiduna Umar ibn Khattab (R) narrated that Allah's Messenger (Sm) said, "Surely, the most excellent of Allah's slaves in Allah's sight on the day of resurrection will be a just and a soft-hearted ruler. And, indeed, the worst of all people

in Allah’s sight on the day of resurrection will be a brutal and intolerant ruler.”

TO FRIGHTEN A MUSLIM IS PUNISHABLE OFFENCE

3720. Sayyiduna Abdullah ibn Amr (R) said that Allah’s Messenger (Sm) said, “He who looks at his brother with a look that frightens will be frightened by Allah on the day of resurrection.”

COMMENTARY: If merely frightening a Muslim is punishable on the day of resurrection then what will happen to one who oppresses a Muslim?

BETTER TO CORRECT YOURSELVES THAN CURSE RULERS

3721. Sayyiduna Abu Darda (R) narrated that Allah’s Messenger (Sm) said. “Surely, Allah, the Exalted, says, ‘I am Allah. There is no God but I, Master of Kings, and King of Kings. The hearts of the Kings are in My hand. When the slaves (creatures) obey Me, I turn the hearts of their Kings toward them with mercy and Mildness. But, when the slaves disobey Me, I turn their hearts against them with anger and vengeance so they punish them with a terrible punishment. So, do not occupy yourself with praying against the Kings, but occupy yourself in dhikr (remembrance of Me) and humble petition that I may preserve you from your Kings’

COMMENTARY: This hadith says that the way the rulers treat their subjects depends inwardly on the deeds and manners of the masses. If they are righteous then even an unjust ruler turns just, mild and kind to them. But if they are wicked and

disobedient to Allah, then even a just and kind ruler treats them harshly.

Therefore, instead of blaming the ruler and cursing him, the masses must turn to Allah, repent for their bad deeds and seek Allah's forgiveness. They must plead to him with humility and mould their deeds and affairs strictly according to the commands of Allah and His Messenger so that His mercy embraces them and He turns their ruler toward them in justice and kindness.

RULERS MUST FACILITATE THINGS AS WAJIB (OBLIGATORY)

The previous chapter prescribed on the subjects obedience to their rulers. This calls on the rulers to make things easy for their subjects.

RULERS MUST BE CONSIDERATE

3722. Sayyiduna Abu Musa (R) narrated that Allah's Messenger (Sm) said to whichever of his Sahabah (R) whom he sent to oversee some of his affairs (like taking over as governor of a place), "Give them good tidings and do not frighten them. And make things easy. Do not make things difficult

3723. Sayyiduna Anas (R) narrated that Allah's Messenger (Sm) said (to his governors and revenue collectors), "Make things easy (for the people). Do not put them to difficulty. Let them be serene (by conveying to them glad-tidings of Allah's blessings) and do not frighten them (much, of Allah's punishment causing them to dislike and disobey).

3724. Sayyiduna Abu Burdah (R) narrated that the Prophet (Sm) sent his grandfather, Abu Musa (R) (Ash'ari) and Mu'adh (R) to Yemen, saying to them, "Make things easy and do not make them difficult. Give glad tidings and do not frighten. Be united (compliant with one another) and do not disagree.

COMMENTARY: The narrator's name should be Ibn Abu Burdah. Abu Burdah (R) was the son of Abu Musa (R) Ibn Abu Burdah (R) who narrated this hadith was sa'eed (R). His other brothers who narrated ahadith from their father, Abu Burdah (R) were Abdullah, Yusuf and Bilal (R) Bukhari has the name of saeed ibn Abu Burdah (R) as the narrator of this hadith. He

heard from his father abu Burdah (R) that the Prophet had sent to Yemen his father, Abu Musa (R) and Mu'adh (R).

DECEITFUL WILL BE DISGRACED

3725. Sayyiduna Ibn Umar (R) narrated that Allah's Messenger (Sm) said, "On the day of resurrection, the deceitful man will have a standard set up for him (to disgrace him). An announcement will be made, "This is the (sign of) deceit of so-and-so son of so-and-so.

3726. Sayyiduna Anas (R) narrated that the Prophet (Sm) said, "On the day of resurrection everydeceitful person will have a standard. He will be recognized by it.

3727. Sayyiduna Abu Saeed (R) narrated that the Prophet (Sm) said, "On the day of resurrection, every deceitful person will have a standard set up near his anus." According to another version: "On the day of resurrection, every deceitful person will have a standard set up aloft for him commensurate with the amount of deceit he committed. Know! None is more deceitful than (a deceitful) leader of a people.

WARNING TO RULERS WHO DO NOT SATISFY NEEDS OF THEIR SUBJECTS

3728. Sayyiduna Amr ibn Murrah (R) reported his saying to Mu'awiya (R) "I had heard Allah's Messenger (Sm) say that if Allah puts someone in authority over some affairs of the Muslims but he shuts his door from redressing their need, helplessness and poverty then Allah will turn away from redressing his need, helplessness and poverty." On that Mu'awiyah (R) placed a man to look after the needs of the People.

According to a version: "Allah will shut the gates of heaven on his helplessness, needs and poverty."

RULER WHO SHUTS HIS GATES WILL FIND GATES OF DIVINE MERCY SHUT

3729. Sayyiduna Abu Shammakh Azdi (R) reported that one of his paternal cousins who was a sahabi (R) of the Prophet (Sm) said that he visited Mu'awiyah (R) He met him and said to him that he had heard Allah's Messenger (Sm) say, "He who is placed in some authority over the people and shuts his gate against the Muslims, or the oppressed, or a needy person (denying them their need), will find that Allah will shut against him the gates of His Mercy when he in need or in poverty, howsoever much he may be in need of Him."

UMAR (R) ADVICE TO HIS GOVERNORS

3730. Sayyiduna Umar ibn Khattab (R) is reported to have stipulated on his governors when he sent them (to their assignments) that:

They should not ride Turkish horses, eat white bread, wear fine clothing, or shut their gates against the needs of the people.

He warned them that if they did any of these things, then they would be liable to punishment. After that (having given these instructions,) he walked with them some distance.

COMMENTARY: He forbade them to ride Turkish horses that they might not be arrogant. On this basis, it is more proper not to ride the Arabian horses which are of a high breed. Teebi (Rh) said that the governors were disallowed those things because they smacked of arrogance.

CONDUCTING THE OFFICE OF THE QADI (JUDGE) & FEAR OF IT

We had stated in the introductory passages of this book XVII (office of the commander & of the Qadi) that the pivot of Islamic manner of government are the head of state and the qadi and in the previous two chapters, matters concerning the ruler were treated. In this chapter, we shall deal with the office of the judge. We shall mention:

- (i) The judge must rely merely on the Islamic code of law which is derived from the book and the sunnah (Prophet's (Sm) practice), and his ijihad as his guide. His decision should not contravene these sources of Islamic law.
- (ii) This office is so very high and significant that not everyone should try to attain it. Rather, as far as possible, one must try to avoid taking this responsibility and must be fearful of holding it.

JUDGEMENT NOT WHEN ANGRY

3731. Sayyiduna Abu Bakrah (R) narrated that he heard Allah's Messenger (Sm) say, "A judge must not give judgement between two people when he is angry."

COMMENTARY: When a person is angry, he loses ability to ponder and decide. So, he cannot pass a fair judgement. Also, no judgement may be passed when it is very cold or very hot, when one is hungry or thirsty and when one is ill. Any judgement given in such condition will be implemented with dislike.

JUDGE MAY RESORT TO IJTIHAD

3732. Sayyiduna Abdullah ibn Amr (R) and Abu Hurayrah (R) narrated that Allah’s Messenger (Sm) said, “When a ruler (or judge) passess judgement and resorts to ijthihad (pondering deeply over the case) and is correct (in making it), he will get two rewards (one for his ijthihad and the other for the correct decision). And, when he passess judgement having resorted to ijthihad but is wrong, he will get one reward.”

COMMENTARY: When a judge finds no answer to the case before him in the Book and Sunnah (Prophet’s (Sm) practice) or in fiqh (Islamic jurisprudence), he may make an ijthihad by pondering over the Book and Sunnah (Prophet’s (Sm). practice) and parallel rulings in similar cases and in the books of fiqh (Islamic jurisprudence). His judgement will be regarded as correct in law, but in terms of the hereafter, there are two possibilities. If his judgement is correct by the Book and Sunnah (Prophet’s (Sm) practice) then he gets a dual reward and, if it is wrong, he nevertheless gets one reward for trying honestly. So, a mujtahid is liable to err, but he gets a reward anyway.

Mulla Ali Qari (Rh) said that if a ruling is not found in the regular texts or precedent then one may resort to qiyas (analogy). It is like finding out the qiblah. When one has no means to find it out, one may make an assumption to the best of one’s ability before offering salah (prayer). His effort will be deemed to have produced a correct result even if he did not face the qiblah in fact.

OFFICE OF QADI IS A TRIAL

3733. Sayyiduna Abu Hurayrah (R) narrated that Allah’s Messenger (Sm) said, “He who has been made a judge over the people has indeed been slaughtered without a Knife.”

COMMENTARY: He is slaughtered because he is ruined mentally and spiritually. A judge is always upset and in agony. He is ill without medicine and is worried about spoiling his hereafter. If anyone is killed with a Knife that is painful for a moment while a judge's pain is for a lifetime.

DO NOT ASPIRE TO BE A QADI

3734. Sayyiduna Anas (R) narrated that Allah's Messenger (Sm) said, "He who craves for the office of a judge and applies for it (to the authority, and gets it), then it will be entrusted to him (to sort out his problems). But, if anyone is compelled to accept it (without his craving for it) then Allah sends down an angel who directs him to the right course (in running it)."

JUDGES OF PARADISE AND OF HELL

3735. Sayyiduna Buraydah (R) narrated that Allah's Messenger (Sm) said, "Judges are of three Kinds. One of these Kinds comprises those who will be admitted to paradise and two Kinds are made up of those who will be consigned to hell. As for the one who will enter paradise, he is the man who knows what is right and gives judgement on that basis. And the man who knows (the truth and) what is right yet transgresses in his judgement will be sent to hell. And, so a man who gives judgement to the people though he is ignorant will be sent to hell."

3736. Sayyiduna abu Hurayrah (R) narrated that Allah's Messenger said, "If anyone seeks the office of judge over the Muslims so that he gets it and his justice overwhelms his injustice (and tyranny), then he will go to paradise. But, if anyone's injustice dominates his justice then he will go to hell."

COMMENTARY: The apparent meaning is that both these kinds of judges will dispense both justice and injustice. Since their fate will be decided according to what overwhelms, the one whose justice prevails will go to paradise. If he is more unjust in giving judgement than just, then he will go to hell. In both cases, there is predominance of one trait over the other.

QIYAS AND IJTIHAD ARE ALLOWED

3737. Sayyiduna Mu'adh ibn Jabal (R) narrated that when Allah's Messenger (Sm) sent him to Yemen (as a judge and ruler), he asked him, "How will you judge when a case is brought to you?" He said, "I shall decide according to Allah's Book." He asked, "And if you do not find an answer in Allah's Book? He said, "Then I will follow the sunnah (Prophet's (Sm) practice) of Allah's Messenger (Sm)." He asked, "And if you find no answer in the sunnah (Prophet's (Sm) practice) of Allah's Messenger (Sm)." He said, "I shall use my opinion and make ijtihaad and not lag behind in it." So, Allah's Messenger (Sm) patted him on his breast and said, "Praise belongs to Allah who has made the messenger of the Messenger of Allah consistent with what pleases him."

COMMENTARY: He said that he would deduce from the relevant rulings and similar cases and laws in the Quran and the Sunnah (Prophet's (Sm) practice).

Mazhar also explained the hadith in the same way. The imams, who are mujtahids have deduced many judgements on qiyas. However, they have differed on its application and recourse to it. For example, Imam Shafi'i compares interest on barter of wheat for wheat to interest on watermelon for watermelon because both are eatables. Imam Abu Hanifah (Rh) compares wheat for wheat to lime for lime, both being weighable

commodities. Interest is forbidden in any case (when more of same commodity is exchanged for less of it).

In short, this hadith is a strong evidence that qiyas and ijthad are allowed and lawful. It rejects the zawahir (ghayr muqallidin) who reject qiyas and ijthad.

AFTER PLAINTIFF DEFENDANT MUST BE HEARD TOO

3738. Sayyiduna Ali (R) narrated that Allah’s Messenger (Sm) decided to send him to Yemen as a qadi, so he submitted, “O Messenger of Allah, you send me while I am young and do not possess (enough) knowledge of the office of qadi.” He said, “Surely, Allah will guide your heart (to rectitude) and cause your tongue to be true (in making judgement).” (Then he gave him instructions, saying) “When two men bring to you their case, do not decide in favour of the first (the plaintiff) till you have heard the argument of the second (the defendant), for this will help you arrive at a correct decision.”

He narrated (further), “After that I (followed) his instructions and) did not have any doubt (or hesitation) in deciding (a case before me).”

“And we shall reproduce the hadith of Sayyidah Umm Salamah (R) (#3770) in the chapter about cases and testimonies (Chapter V).

THE FATE OF A TYRANT

3739. Sayyiduna Abdullah ibn Mas’ud (R) narrated that Allah’s Messenger (Sm) said, “Every ruler who rules and judges among the people will be brought on the day of resurrection (to the presence of the Judge of Judges and the Ruler of rulers), an angel holding his nape. The angel will raise his head to heaven

(anticipating a command). If He commands, "Throw him down (in hell)," then he will throw him into a pit (that is) deep (to a distance covered in forty autumns (years))."

COMMENTARY: The words forty autumns deep mean that the pit is like a bottomless pit but they do not determine the time taken to traverse it.

This command will be given for an oppressor and a cruel ruler. The just ruler will be sent to paradise, as we read against the hadith of Abu Umamah (R) (#3714).

3740. Sayyidah Ayshah (R) narrated that Allah's Messenger (Sm) said, "Indeed, there will arise a deep longing to the just judge on the day of resurrection that he had never had to pass judgement between two people even a piece of date."

JUST RULER HAS ALLAH'S SUPPORT

3741. Sayyiduna Abdullah ibn Abu Awfa (R) narrated that Allah's Messenger (Sm) said, "Indeed, Allah is with the judge till he does not wrong (and be unjust and he has Allah's support and enablement till then). But when he wrongs (and becomes unjust). He departs from him and the devil sticks to him."

According to another version: "When he wrongs (and is unjust). He entrusts him to his own self."

3742. Sayyiduna Saeed ibn Musayyab (R) narrated that a Muslim and a Jew brought a dispute (in which they were involved) before Umar (R). He (heard them and) found that the Jew was justified, so he pronounced judgement in his favour. The Jew said to him, "By Allah, indeed, you judged justly." On that, Umar (R) beat him with his whip and asked him, "How do you know it?" The Jew said, "By Allah, we do find in Torah that every judge who decides justly has an angel to his right and an angel to his left. They guide and urge him to

that which is (right and) just till he sticks to the right. When he abandons the right they ascend (to the heaven) and leave him (to himself).”

COMMENTARY: A question arises why did Umar (R) beat the Jew when he described his judgement as fair. Another question is how is the Jew’s reply compatible with Umar (R)’s question, “How do you know it?”

The first answer is that he did not beat him angrily but struck him mildly with a good nature. The second answer is that the Jew knew that he was right, so if Umar (R) was not just, he would have favoured the Muslim, and been unjust.

DID NOT ACCEPT OFFICE OF JUDGE

3743. Sayyiduna (Abdullah) Ibn Mawhib (R) reported that Uthman ibn Affan (R) said to Ibn Umar (R) “Become judge among the people.” But, he requested, “Will you not excuse me from it, O Amir-ul-Mumineen? “He asked, “Why do you dislike it while your father used to judge (among the people)?” He said, “It is because I heard Allah’s Messenger (Sm) say, ‘He who is a judge, and is just in his judgment it is hoped that he would manage to get over evens (without reward or blame).’ Thereafter, he did not ask him again (to take the office).

3744. Sayyiduna Nafi (Rh) narrated that Ibn Umar (R) said to Uthman (R), “O Amir ul-Mumineen! I shall not act as judge between two men.” He pointed out, “But your father used to judge.” He submitted, “As for my father, if he was hesitant about something, then he would ask Allah’s Messenger (Sm) And if Allah’s Messenger (Sm) wished to clarify something, he would ask Jibril (As). As for me, I do not find anyone whom I might ask. And, I had heard Allah’s Messenger (Sm) say, ‘If anyone seeks refuge in Allah, he has sought refuge in a Mighty

Being.' And, I had heard him say. If anyone seeks refuge in Allah, then grant refuge to him.' And I seek refuge in Allah lest you make me a qadi (judge)." Thus he excused him, but said to him, "Do not inform anyone (of this)."

He meant that if people shy away from this office then the working of the government would come to a standstill.

THE BOOK OF AL-FARA'ID[1] (THE LAWS OF INHERITANCE) The book of Nikah (Wedlock)

SECTION -1 (A)

If ye fear that ye shall not be able to deal justly with orphans, Marry women of your choice, two or three or four, but if ye fear that ye shall not be able to deal justly (with them), then only one or (a captive) that your right hands possess. That will be more suitable, to prevent you from doing injustice. (Sura Nessa or the Women.)

If ye fear that ye shall not be able to deal justly with orphans, Marry women of your choice, two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one or (a captive) that your right hands possess. That will be more suitable, to prevent you from doing injustice. (Sura Nisaa or The Women). **4:3**

And give the women (on marriage) their dower as a free gift (The obligatory bridal gift (mahr); but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer (Knowing that it is lawful). (Al-Quran). **4:4**

5. To those weak of understanding.

Make not over your property, which Allah hath made a means of support for you, but feed and clothe them therewith, and speak to them words of kindness and justice.

6. Make trial of orphans until they reach the age of marriage; if then ye find sound judgement in them, release their property to them; but consume it not wastefully nor in haste against their growing up.

If the guardian is rich let him claim on remuneration, but if he is poor, let him have for himself what is just and reasonable. When ye release their property to then take witnesses in their presence:

But all - sufficient. Is Allah in taking account.

SECTION -1 (B)

For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share. 4:7

And when [other] relatives and orphans and the needy are present at the [time of] division, then provide for them [something] out of the estate and speak to them words of appropriate kindness. 4:8

And let those [executors and guardians] fear [injustice] as if they [themselves] had left weak offspring behind and feared for them. So let them fear Allah and speak words of appropriate justice. 4:9

Indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire. And they will be burned in a Blaze. 4:10

4657 (26) Hazrat Abu Umama (Baheli [R]) said, Rasulullah. He said, "Whoever puts his hand on the head of a yatir for the sake of Allah's pleasure, and whoever crosses his hand over all the hair, his reward will be written for him in return." And whoever treats well the orphaned boys and girls under his care, I and that person will be like these two in heaven. Saying this, he put his two fingers together. -Ahmad and Tirmidhi.

4657 (29) Hazrat Abdullah bin Abbas (R), Said the Prophet. He said, "Whoever gives shelter to an orphan in his food and

drink, Allah will surely make Paradise obligatory for him until he commits a sin which is not forgivable." And whoever raises three daughters or this number of sisters, that is, teaches them manners and loves them, until Allah frees them from pure dependence, Allah will prescribe pure paradise for him. Then a person asked, O Messenger of Allah! Will there be a similar reward for both? He says he will get the same reward for two people. The narrator said that even if they (the Companions) asked about one, he would say the same about one. (The narrator says,) He further said: Heaven is destined for the one whom Allah has taken away two precious favorite things. Someone asked, what are those two favorite objects? "His eyes," he said. Sunnah in Sharh Explanation: "Any sin which will not be forgiven," can lead to any kind of shirk or subsequent right or wrong. 'To be freed from dependency' means to be freed from the dependence of one's guardian by wealth or by marriage.

THE BOOK OF AL-FARA'ID[1] (THE LAWS OF INHERITANCE)

SECTION - 2 (A)

Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate (Literally, "that which he left."). And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth (Although the siblings themselves do not inherit in this case), after any bequest he [may have] made or debt (Based upon prophetic hadiths, scholars have ruled that debt takes precedent over a bequest, that a bequest may not include any who inherit by law. and that the total bequest may not be more than one third of one's estate. After the fulfillment of debts and bequests (if any), the remainder of the estate is to be divided according to the ordinances in this surah). Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise. **4:11**

For parents, a sixth share of the inheritance to each, if the deceased left children; if on children, and the parents are the (only) heirs, the mother has a third; if the deceased left brother (or sister). The mother has a sixth.

(The distribution in all cases is) after the payment of legacies and debts. You know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is all-knowing, all-wise.

SECTION-2(B)

In what your wives leave, your share is a half. If they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth. If ye leave no child; but if ye leave a child, They get an eighth; after payment of legacies and debts.

And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third (These shares are divided equally between males and females), after any bequest which was made or debt, as long as there is no detriment [caused] (This is a condition for any bequest. If it has been violated by the deceased, his bequest is not to be honoured, or it may be adjusted by the executor). [This is] an ordinance from Allah, and Allah is Knowing and Forbearing. **4:12**

These are the limits [set by] Allah, and whoever obeys Allah and His Messenger will be admitted by Him to gardens [in Paradise] under which rivers flow, abiding eternally therein; and that is the great attainment. **4:13**

And whoever disobeys Allah and His Messenger and transgresses His limits - He will put him into the Fire to abide eternally therein, and he will have a humiliating punishment. **4:14**

SECTION - 3 (A)

If any of your women are guilty of lewdness, take the evidence of your 524 (reliable) witnesses from amongst you against them to houses until death do them, or Allah ordain for them some (other) way.

Those who commit unlawful sexual intercourse of your women - bring against them four [witnesses] from among you. And if they testify (The witnesses must swear to actually having seen the act taking place.), confine the guilty women to houses until death takes them or Allah ordains for them [another] way. **4:15**

And the two (Scholars differ over whether "the two" refers to two of the same sex (i.e., homosexuals) or those of opposite sexes. In either case, later rulings outlined in the sunnah have replaced this one) who commit it among you, dishonor them both. But if they repent and correct themselves, leave them alone. Indeed, Allah is ever Accepting of repentance and Merciful. **4:16**

SECTION - 3 (B)

Allah accepts the repentance of those who do evil. In ignorance and repent soon afterwards: To them, will Allah turn in mercy: for Allah is full of knowledge and wisdom.

The repentance accepted by Allah is only for those who do wrong in ignorance [or carelessness] and then repent soon after. It is those to whom Allah will turn in forgiveness, and Allah is ever Knowing and Wise. **4:17**

But repentance is not [accepted] of those who [continue to] do evil deeds up until, when death comes to one of them, he says, "Indeed, I have repented now," or of those who die while

they are disbelievers. For them We have prepared a painful punishment. 4:18

O you who have believed, it is not lawful for you to inherit women by compulsion (The deceased man's heirs have no rights of marriage or otherwise over his widow). And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality. And live with them (At the time of marriage as mahr) in kindness. For if you dislike them - perhaps you dislike a thing and Allah makes therein much good. 4:19

But if you want to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin? 4:20

And how could you take it while you have gone in unto each other and they have taken from you a solemn covenant? 4:21

And do not marry those [women] whom your fathers married, except what has already occurred (Before Islam. After the ruling was revealed by Allah, men were required to release those women unlawful to them (e.g., a stepmother, one of two sisters, or any wives over the limit of four). The same obligation applies to one once he has accepted Islam). Indeed, it was an immorality and hateful [to Allah] and was evil as a way. 4:22

SECTION - 4

Prohibited to you (for marriage) are:- your mothers, daughters, sisters, fathers mothers sisters, brothers daughters sisters daughters; foster-mothers (Who gave you suck; foster sisters; your wives' mother; guardianship born of your wives to whom ye have gone in, no prohibition if ye have not gone in; (Those who have been) wives of your sons proceeding from your loins and two sisters in wedlock

at one and the same time, except (or what is post); For Allah is oft forgiving.

Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your [milk] mothers who nursed you, your sisters through nursing, your wives' mothers, and your step-daughters under your guardianship [born] of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And [also prohibited are] the wives of your sons who are from your [own] loins, and that you take [in marriage] two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful. **4:23**

And [also prohibited to you are all] married women except those your right hands possess (i.e. slaves or war captives who had polytheist husbands). [This is] the decree of Allah upon you. And lawful to you are [all others] beyond these, [provided] that you seek them [in marriage] with [gifts from] your property, desiring chastity, not unlawful sexual intercourse. So for whatever you enjoy [of marriage] from them, give them their due compensation (The mahr, a specified gift to the bride required of the man upon marriage) as an obligation. And there is no blame upon you for what you mutually agree to beyond the obligation. Indeed, Allah is ever Knowing and Wise. **4:24**

And whoever among you cannot [find] the means to marry free, believing women, then [he may marry] from those whom your right hands possess of believing slave girls. And Allah is most knowing about your faith. You [believers] are of one another. So marry them with the permission of their people and give them their due compensation according to what is acceptable. [They should be] chaste, neither [of] those who

commit unlawful intercourse randomly nor those who take [secret] lovers. But once they are sheltered in marriage, if they should commit adultery, then for them is half the punishment for free [unmarried] women. This [allowance] is for him among you who fears sin, but to be patient is better for you. And Allah is Forgiving and Merciful. **4:25**

SECTION - 5

Allah dot wish to make dear to you and to show you the ordinances of those before you; and (He dot wish to) turn to you (In Mercy), and Allah is all-knowing, ail wise.

Allah wants to make clear to you [the lawful from the unlawful] and guide you to the [good] practices of those before you and to accept your repentance. And Allah is Knowing and Wise. **4:26**

Allah wants to accept your repentance, but those who follow [their] passions want you to digress [into] a great deviation. **4:27**

And Allah wants to lighten for you [your difficulties]; and mankind was created weak. **4:28**

O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful. **4:29**

And whoever does that in aggression and injustice - then We will drive him into a Fire. And that, for Allah, is [always] easy. **4:30**

If you avoid the major sins which you are forbidden, We will remove from you your lesser sins and admit you to a noble entrance [into Paradise]. **4:31**

And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of his bounty. Indeed Allah is ever, of all things, Knowing. 4:32

And for all, We have made heirs to what is left by parents and relatives. And to those whom your oaths have bound [to you] - give them their share. Indeed Allah is ever, over all things, a Witness. **4:33**

For truly Allah is witness to ail things.

SECTION - 6

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the others and because they support them from their means Therefore the righteous women are devoutly obedient and guard in (the husband's) absence what Allah would have them guard.

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other and because they support them from their means. Therefore the righteous women are devoutly obedient and guard in (the husbands) absence what Allah would have them guard. 4:34

As to those women on disloyalty and ill-conduct, admonish them (first) (next), refuse to share their beds (and last), beat them (lightly); seek not against them means (of annoyance): For Allah is most high, great (above you all). (Al-Quran, 4: 35).

35. If ye fear a breach between them twain, appoint (two) arbiters, one from his family and the other from hers; if they wish for peace, Allah will cause: their reconciliation; For Allah hath full knowledge and is acquainted with all things.

Serve Allah and join not any do Allah to parents, kinsfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side, the way-fare (ye and what your right hands possess; For Allah lofts not the arrogant, the vainglorious. 4:36

SECTION - 24 Sura Nessa or The Women

They ask thee for a legal decision. Say; Allah directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a ftidtdl but no child, she sh;ill have half the inheritance: if (such a deceased was) a woman, who left no child, her brother takes her inheritance; if there are two sisters, they shall have two-thirds of the inheritance (between them); if there are brother and sister, (they share), the male having twice the share of the female. Thus dot Allah make clear to you (His law), list ye err. And Allah hath knowledge of all things. (Al-Quran, 4:176)

176. They ask thee for a legal decision. Say; Allah directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: if (such a deceased was) a woman, who left no child, her brother takes her inheritance; if there are two sisters, they shall have two-thirds of the inheritance (between them); if there are brother and sister, (they share), the male having twice the share of the female. Thus dot Allah make clear to you (His law), list ye err. And Allah hath knowledge of all things. (Al-Quraan, 4:176).

Sura Baqara or The Heifer

The mother shall give suck to their offspring for two whole years, if the father desires to complete the term and we have enjoined on man kindness to his parents:

In pain did his mother bear him, and in pain did she give him birth. The carrying of the (child) to his weaning is (A period of) thirty months at length, when he reaches the age of full strength and attains forty years.

233. The mother shall give suck to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child. Nor father on account of his child, an heir shall be chargeable in the same way. If they both decide on weaning, by mutual consent and after due consultation, there is no blame on them.

If ye decide on a foster mother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered, on equitable terms. But fear Allah and know that Allah sees well what ye do. (Al-Quran, 2:233)

Sura Ahqaf or Winding sand - tracts.

15. We have enjoined on man kindness to his parents: In pain did his mother bear him and in pain did she give him birth, the carrying of the (child) to his weaning is (A period of) thirty months at length, when he reaches the age of full strength and attains forty years. (Al-Quran, 46:15).

Section 13 Sura Nessa or The Women

Never should a believer kill a believer; but (if it so happens) by mistake, (compensation is due): if one (so) kills a believer, it is ordained that he should free a believing slave and pay compensation to the deceased's family, unless they remit it freely, if the deceased belonged to a people at war with you and he was a believers, the freeing of a believing slave (Is enough). If he belonged to a people with whom ye have a treaty of mutual alliance, compensation should be paid to his family and a believing slave be freed. For those who find this beyond their means (is prescribed) a fast for two month running: by way of repentance to Allah: For Allah hath all knowledge and all wisdom.

92. Never should a believer kill a believer; but (If it so happens) by mistake, (Compensation is due): If one (so) kills a believer, it is ordained that he should free a believing slave and pay compensation to the deceased's family, unless they remit it freely, if the deceased belonged to a people at war with you and he was a believers, the freeing of a believing slave (Is enough). If he belonged to a people with whom ye have a treaty of mutual alliance, compensation should be paid to his family and a believing slave be freed. For those who find this beyond their means (is prescribed) a fast for two month running: by way of repentance to Allah: For Allah hath all knowledge and all wisdom. (Al-Quran, 4:92).

93. If a man kills a believer Intentional, his recompense is Hell, to abide therein (forever): and the wrath and the curse of Allah are upon him and a dreadful penalty is prepared for him. (Al-Quran, 4:93)

Section 8 Sura Nessa or The Women

Allah dot command you to render back your trusts to those to whom they are due; and when ye judge between man and man, that ye judge with justice: verily how excellent is the teaching which He gift you! For Allah is He who hearth and see the all things. (Al-Quran, 4:58).

58. Allah dot command you to render back your trusts to those to whom they are due; and when ye judge between man and man, that ye judge with justice: verily how excellent is the teaching which He gift you! For Allah is He who hearth and see the all things. (Al-Quran, 4:58)

59. O ye who believe! Obey Allah and obey the Apostle and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and his Apostle, if ye do believe in Allah and the last day: that is best and most suitable for final determination. (Al-Quran, 4:59).

Sura Baqara or The Heifer.

O ye who believe! The law of equality prescribed to you in cases of murder: The free for the free, the slave for the slave, the women for the women. But if any remission is made by the brother of the slain, then grant any reasonable demand and compensate him with handsome gratitude. This is a concession and a mercy from your lord. After this whoever shall be in grave penalty.

178. O ye who believe! The law of equality is proscribed to you in cases of murder: The free for the free, the slave for the slave, the women for the women. But if any remission is made by the brother of the slain, then grant any reasonable demand and compensate him with handsome gratitude. This is a concession and a mercy from your lord. After this whoever shall be in grave penalty. (Al-Quran, 2:178)

In the Law of Equality there is (saving of) life to you, "O ye men of understanding; That ye may restrain yourselves." (Al Quran, 2:179)

179. In the Law of Equality there is (saving of) life to you, "O ye men of understanding; That ye may restrain yourselves. "(Al Quran, 2:179)

They ask thee concerning when and gambling Say; O in them is great sin and some profit for men; But the sin is greater than the profit." O They ask thee how much they are to spend; Say: O What Is beyond your needs "Thus dote Allah make dear to you His sings; in order that ye may consider.

219.They ask thee concerning when and gambling. Say; 6 in them is great sin and some profit for men; but the sin is greater

than the profit. 6 they ask thee how much they are to spend; Say: O what is beyond your needs." (2:219).

Thus do Allah make clear to you His signs: in order that ye may consider.

Sura Maida or The Table Spread.

(Law Of Food)

Forbidden to you (for food) are: dead meat, blood, the flesh of swine and that on which hath been invoked the name of other than Allah; That which hath been killed by strangling or by a violent blow or by a headlong fall or by being gored to death; That which hath been (partly) eaten by a wild animal; Unless ye are able to slaughter it (in due form); That which is sacrificed on stone (altars); (Forbidden) also is the division (of meat) by raffling. With arrows: That is impiety. (Al-Quran, 5:3)

This day have those who reject faith given up all hope of your religion: Yet fear them not but fear them me. This day have I perfected your religion for you, completed my favour upon you and have chosen for you Islam as your religion.

But if any is forced by hunger, with no inclination to transgression, Allah is indeed oft forgiving, most merciful.

O ye who believe! Intoxicants and gambling. (Dedication of) stones and (divination by) arrows, are an abomination, of Shaitan's handiwork. eschew such (abomination), that ye may prosper.

O ye who believe! Intoxicants and gambling, (Dedication of) stones, and (divination by) arrows, are an abomination, of Shaitan's handiwork: eschew such (abomination), that ye may prosper. (5:90)

Shaitan's plan is (but) to excite enmity and hatred between you, with intoxicants and gambling and hinder you from the remembrance of Allah and from prayer: Will ye not then abstain?

Shaitan's plan is (but) to excite enmity and hatred between you, with intoxicants and gambling and hinder you from the remembrance of Allah and from prayer: Will ye not then abstain? (5:91).

Sura Nur or The Light.

(Law on Fornication)

Let no man guilty of adultery or fornication marries any but a woman similarly guilty or an unbeliever: Nor let any but such a man or an unbeliever marries such a woman: To the believers such a thing is forbidden.

3. Let no man guilty of adultery of fornication marries any but a woman similarly guilty or an unbeliever: Nor let any but such a man or an unbeliever marries such a woman: To the believers such a thing is forbidden. 24:3

4. And those who launch a charge against chaste woman and produce not four witnesses (To support their allegations); flog them with eighty stripes and reject their evidence ever after; for such men are wicked transgressors. 24:4

THE BOOK OF DIVORCE

[The statement of Allah, Prophet! when you divorce women, which (accurately) their 'Iddah (prescribed periods)] (65:1)

The statement of Allah, Prophet (Sm)! when you divorce women, which (accurately) their Iddah (prescribed periods) (65:1)

1872. Narrated 'Abdullah Bin Umar (R) that he had divorced his wife while she was menstruating during the life time of Allah's Messenger (Sm) Umar Bin Al-Khattab (R) asked Allah's Messenger about that. Allah's Messenger said, "Order him (your son) to take her back and keep her till she is clean from her menses and then to wait till she gets her next period and becomes clean again, where upon, if he wishes to keep her, he can divorce her before having sexual intercourse with her and that is the prescribed period which Allah has fixed for the women meant to be divorced." (7:178 & Sahih-AI-Bukhari).

Chapter 1: If a woman is divorced during her menses, then that divorce is counted as one legal divorce.

1873. Narrated (Ibn Umar) (R) (Divorcing my wife during her menses) was counted as one legal divorce i.e one of the three divorces. [7:180 & Sahih-AI-Bukhari]

CAPTER 2. Whoever divorced (his wife) and should n man tell his wife face to face thai she is divorced.

1874. Narrated Ayesha (R), when the daughter of Al-Jaun was brought to Allah's Messenger (as his bride) and he went near her. She said, "I seek refuge with Allah from you". He said,

"you have sought refuge with the most great return to your family." [7:181 & Sahih-AI-Bukhari]

[Narrated Abu Usaid in a similar Hadith (as above Hadith) and said, "She (Jauniya a lady from Bani Jaun) was brought along with her wet nurse (as a bride for the Prophet) when the Prophet entered upon her, He said to her, "Give me yourself (in marriage) as a gift."]

1875. Narrated Abu Usaid in a similar Hadith (as above Hadith) and said. "The (Jauniya a lady from Bani jaun) was brought along with her wet nurse (as a bride for the prophet) when the Prophet entered upon her, He said to her, "Give me yourself (in marriage) as a gift." She said, "Can a princess give herself in marriage to an ordinary man?" The Prophet raised his hand to pat her so that she might become tranquil (as she did not know that he was Allah's Messenger). She said, "I seek refuge with Allah from you." He said, "You have sought refuge with one who gives refuge." Then the Prophet came out to us and said, "O Abu Usaid ! Give her two white linen dresses to wear and let her go back to her family (i. e. she is divorced)." [7: 182-0. Sahih-AI-Bukhari]

Chapter 3. Whoever thinks it permissible to divorce ones wife thrice (At a time), depending on the statement of Allah: "The divorce is (only permissible) twice reasonable terms or release her on reasonable terms or release her with kindness."(v. 229)

1876. Narrated Ayesha: The wife of Rifa'a-AI-Qurazi came to Allah's Messenger. Rifa'a divorced me irrevocably. After him I married 'Abdur-Rahman Bin Az-Zubair AI-Qurazi who proved to be impotent. Allah's Messenger said to her "Perhaps you want to return to Rifa'a may (you cannot return to Rifa's) until you enjoy the sexual relation (consummate your marriage)

with him (Abdur Rahman) and he with you." [7:186 & S'ahih-AI-Bukhari]

CHAPTER 4. Statement of Allah: "O Prophet! Why do you ban (for yourself) that which Allah has made lawful to you." (66:1)

1877. Narrated Ayesha (R); Allah's Messenger fond of honey and sweet edible things and (it was his habit) that after finishing the Asr prayer he would visit that time. Once he went to Hafsa the daughter of Umar and stayed with her more than usual. I got jealous and asked the reason for that. I was told that a lady of her folk had given her a skin filled with her honey as a present and that she made a syrup from it and gave it to the Prophet to drink (and that was the reason for the delay). I said, "By Allah, we will play a trick on him (to prevent him from doing so). So I said to Saudi Bint Zam'a, "The Prophet will approach you and when he comes near you, say; 'Have you taken Maghafir (a bad-smelling gum)? He will say, 'No'. Then say to him, Then what is this bad smell which I smell from you?' He will say to you, "Hafsa made me drink honey syrup." Then say, "Perhaps the bees of that tree of Al-'Urfut." I shall also say the same. O you, Safiya, say, the same. "Later Sauda said, "By Allah, as soon as the door. I was about to say to him what you had ordered me to say because I was afraid of you." So when the Prophet came near Sauda. she said to him, "O Allah's Messenger! Have you taken Maghafir?" He said, "No." She said, "Then what is this bad smell which I detect on you?" He said, "Hafsa made me drink honey syrup." She said, "Perhaps its bees had sucked the juice of Al-'Urfut tree." When came to me, I also said the same and when the Prophet again went to Hafsa she said, "O Allah's Messenger! Shall I give you more of that drink?" He said, "I am not in need of it." Sauda

said, "By Allah, we deprived him (of it)." I said to her, "Keep quite." [7:193 & Sahih-AI-Bukhari]

15. If a man gives his daughter in marriage while she is averse to it then, such marriage is invalid.

1850. Narrated Khansa Bint Khidham Al-Ansariya (R) that her father gave her in marriage when she was a matron and she disliked that marriage. So she went to Allah's Messenger and he declared that marriage was invalid. (7:69 & Sahih-AI-Bukhari).

CHAPTER 16. None should ask for the hand of a lady who is already engaged to his brother (Muslim), but one should wait till the first suitor marries her or leaves her.

1851. Narrated Ibn Umar (R): The Prophet decreed that one should not try to cancel a bargain already agreed upon between some persons (by offering a bigger price). And a man should not ask for the hand of a lady who is already engaged to his Muslim brother, unless the first suitor gives her up or allows him to ask for her hand. (7:73 & Sahih-AI-Bukhari)

CHAPTER 17. The conditions that are not lawful in the marriage contract.

1852. Narrated Abu Huraira (R): The Prophet said, "It is not lawful for a woman (at the time of wedding) to ask for the divorce of her wedding) to ask for the divorce of her sister (i.e., the other wife of her would-be husband) in order to have everything for herself, for she will take only what (Allah) has foreordained for her." [7:82 & Sahih-AI-Bukhari]

CHAPTER 18. The woman who present the lady to her husband and their invocation for Allah's blessings upon them.

1853. Narrated Ayesha (R)ؓ that she prepared a lady for a man from the Ansar as his bride and the Prophet said, "O Ayesha! Haven't you got any amusement (during the marriage ceremony) as the Ansar like amusement?" [7:92(A) & Sahih-AI-Bukhari]

CHAPTER 19. What a man should say on having a sexual intercourse with his wife.

1854. Narrated Ibn Abbas the Prophet said, "If anyone of you, when having sexual intercourse with his wife, says: Bismillah, Allahumma jannibni-sh-Shaitan, wa jannib-ish-Shaitan ma razaqtana and if it is destined that they should have a child, then Shaitan will never be able to harm him." [7:94 & Sahih-AI-Bukhari]

CHAPTER 20. Al-Walima (the wedding banquet) is recommended to be given even if one sheep is presented therein.

1855. Narrated Anas: The Prophet did not give a better Walima (Wedding banquet) on the occasion of marrying any of his wives than the one he gave that Walima (Wedding banquet) with one sheep. [7:97 & Sahih Al-Bukhari]

CHAPTER 21. Whoever gave a Walima (wedding banquet) of less than one sheep.

1856. Narrated Safiya Bint Shaiba: The Prophet gave a Walima (Wedding banquet) with two Mudd of Barley on marrying

some of his wives. (1 Mudd= of a kilogram). [7:101 & Sahih-AI-Bukhari]

CHAPTER 22. It is obligatory to accept the invitation to a Walima (Wedding banquet) and other invitations. And whoever gave a Walima (Wedding banquet) for seven days or thereabout. (The Prophet did not decree that the Walima should be give for one or two days.)

1867. Narrated Abdullah Bin Umar: Allah's Messenger said, "If anyone of you is invited to a Walima (Wedding banquet) he must go for it (accept the invitation)." [7:102 & Sahih-AI-Bukhari]

CHAPTER 23. The exhortation of taking care of the women.

1858. Narrated Abu Huraira; Allah's Messenger said, "Whoever believes in Allah and the last day should not harm his neighbor. And I command you to take care of the women, for they are created from a rib and the most crooked portion of the rib is its upper part; if you try to straighten it, you will break it and if you leave it, it will remain crooked, so I command you to take care of the women." [7:114 & Sahih-AI-Bukhari]

Dated 11/12/02 The End

FOREWORD TO FIRST EDITION

In the name of Allah, most Gracious, most Merciful.

I glory Allah and ask blessings and salutation of peace for the noble Prophet (Salallahu-alaihe-wasallam) and his companions and those who follow him in up-holding the cause of right religion. This "Justice in the eye of Islam" book has been made by Mufti Allama Sayed Nazrul Islam. He comes of a very humble and respectable Muslim family. His father Al-Sayed Bazlur Rahman was an exceptional pious & dedicated Muslim. His son Al-Sayed Nazrul Islam is so exceptionally talented that whatever he reads sees and hears, can immediately reproduce it. I have opportunity to know this genius man from his birth. The Holy Quran says, (They are) Those who establish them in the land establish regular prayer and give regular charity enjoying the fight and forbid wrong, with Allah rests the end (And decision) of (all) affairs. (Sura Hajj 22:41)

I have gone through the book "A comparative Study of the Quranic Law (Divine Law) & Penal Code" by Maulana Alhaj Sayed Nazrul Islam and become very happy and delighted. Maulana in his book discussed some important Islamic Judicial Law conceptions and analyses those with the present Penal code, which I think, will knock the sleeping doors of Muslim Ummas. The Holy Quran is a complete code of life and it indicates the best way of life. During the glorious & golden regime of Islam the society was ruled by the holly Quran In this sub Continent during the Muslim regime Quranic Law had reached a higher, elevated and prosperous position and was in force till the pathetic set down of Moghol & Nawabi regime.

Maulana in his book again reminds us that the Quranic law is the only law which can ensure the fair justice and

administration Maulana also explains the inner meanings of 'Kalima e Sahadat and some Dowah' and 'Salatut-Tasbih' which bear moral significance in a Muslim's life no doubt. I hope such an auspicious endeavour of Maulana will surely open the eye of Musam Umma.

We bow before Allah Almighty Who in His infinity mercy gave us strength to come up to the expectation of Muslim Umma.

With best regards.

PRIME MINISTER'S SECRETARIAT (PUBLIC)

Dated : 16/21/96

Islamabad No F 1 (2) PSO-PM-97

Personal Staff Officer to the Prime Minister

(KHAYYAM QAISER)

Acknowledgement

I have gone through the manuscript entitle "Justice in eye of Islam" thoroughly written by Bir Muktijuddha Mufti Allama Syed Nazrul Islam. I nave pleased to make comment on this book which, I sincerely believe, is the result of honest effort undertaken by the author who tried to draw distinctions between the shariya law and the statutory law on some crimes. He also discussed some social laws statutory like marriage, dower divorce etc. and proved the superiority of Islamic law over manmade laws enforced in Bangladesh.

The writer deserves appreciation for such an attempt of writing this book.

(Muhammad Faiz-Ud-Din BA (Hon's) MA)
Professor
Department of Law and Justice
Rajshahi University Rajshahi, Bangladesh.

FOREWORD

I have gone through the book "Justice in the eye of Islam, A comparative study of the Quranic Law (Divine Law) and the Penal code" by Mufti Allama Syed Nazrul Islam and found it a sound and suitable one. Mufti Islam in his book discussed some penal provisions of Islam and analysed these with the Penal code, which I think, will be a substantial elements for thought in the field of Islam. It helps the youth to reconstruct the total picture of the history of Moghol regime and the destiny of the Muslim Ummah. But it dose not cover a chain between the Quranic Law and general Law.

If this book is revised with the view of Quran and Sunna in a balanced and comprehensive manner and provides a very constructive approach to study, that would be more useful for every Muslims, Youth intellectual, researcher and scholar.

with regards.

(Mohammad Abdul Hannan)

LLB (Hon's) LLM (U) LLM (Nottingham)

Professor Department of Law and Justice

Rajshahi University Rajshahi, Bangladesh.

FOREWORD

"Justice in the Eye of Islam, a Comparative Study of the Quranic Law and the Penal Code" could be a good reference of the verses from the holy Quran regarding the offenses, e.g. Murder, Theft, Adultery, Intoxication etc., prevalent in current civilization. Superiority of the Quranic laws over the man made rules e.g. British laws having limitations in application and subsequent significant reduction of the mentioned crimes could have been more descriptive.

This book could be used as a collection of references, only the verses from the holy Quran, to remind us Allah's orders and guidelines for the mankind.

Thanking you,

(M Tariqur Rahman, Ph.D.)

Assistant Professor

BIOTECHNOLOGY DISCIPLINE

Khulna University

ACKNOWLEDGEMENT

Bismillahir Rahmanir Rahim

I have thoroughly gone through the book "Justice in the Eye of Islam: A Comparative Study of the Quranic Law (Divine Law) and the Penal Code" written by Mufti Allama Syed Nazrul Islam (Faridpuri) and am highly impressed. I think that the author has thoroughly imbued with the topic. The field is so vast there none can claim to have mastered. The author of a book like this is under heavy obligations to a number of authorities. The purpose of this book is to open up to the general reader the vast field of Quranic law and the Penal Code.

Although the language of the book conveys no transparency and is not quite satisfactory the author has endeavored his best to collect the required materials for the book from all possible and available sources which are systematically arranged.

Finally, I would like to convey the message to the reader that the aim of this book is to arouse interest in such a vast field. The interested reader, I hope will be highly benefited.

(Dr. Muhammad Saiful Islam)

Associate professor

Department of Arabic Language & Literature.

Islamic University Kushtia, Bangladesh.

ACKNOWLEDGEMENT

Bismillahir Bahmanir Rahim

Justice in the Eye of Islam by Mufti Allama Syed Nazrul Islam, aiming at echoing and upholding the values of the Quranic law to the confused humanity is really a unique enterprise. I do believe that this book will lead to resolving crisis and confusion arising from the law made by human beings.

This book is very likely to lead to the awareness of the Muslims about the darkness they are immersed in. May Allah bless the author for writing such a rare book which is designed to lead people towards divine law that guarantees divine justice

(Professor Md. Nazrul Islam)
Chairman (Rtd),
Department of Geography
Rajshahi University College, Rajshahi.

ACKNOWLEDGEMENT

"Justice in the Eye of Islam : A comparative Study of the Quranic Law and the penal Code" is an arresting work done by Mufti Allama Syed Nazrul Islam. The work, of course, does not celebrate language; it rather looks at unexamined areas of justice as exemplified in the holy Quran and the penal Code. As a guide to Islamic and secular concepts of judicature, the analysis is no doubt illuminating and sincere. Therefore, despite some difficulties in presentation, the authors command on the subject and his efforts to unfold it before the common reader are both deserving of praise.

As a reader delighted and benefitted, I wish this work every success in bringing home Islam and its reflection on divine justice studied beside the human.

(Rubaida Akhter)

Lecturer Department of English

Rajshahi University Rajshahi, Bangladesh.

FOREWORD TO FIRST EDITION

I have gone through the book "A Comparative Study of the Qumic Law (Divine Law) & Penal Code' by Moulana Alhaj Sayed Nazrul Islam and become very happy and delighted. Moulana in his book discussed some important Islamic Judicial Law conceptions and analyses those with the present Penal code, which I think, will knock the sleeping doors of Muslim Ummas. The Holy Quran is a complete code of life and it indicates the best way of life. During the glorious & golden regime of Islam the society was ruled by the Holy Quran. In this sub continent during the Muslim regime Quranic Law had reached a higher, elevated and prosperous position and was in force till the pathetic set down of Moghol & Nawabi regime. Moulana in his book again reminds us that the Quranic law is the only law which can ensure the fair justice and administration.

All praise be to Allah, most high full of Grace and mercy, And I ask blessings and salutations of peace for the noble Prophet (Sallallahu-alaihe wasallam) and his companions and those who follow him in upholding the cause of right religion.

The Holy Quran is not a traditional or conventional religious book for a dean or a particular group only. It is the last edition of universal religion, which is the guide to mankind and also clear proofs for guidance and Judgement (Between right or wrong) it is an endless guidance to eternal journey. There is no such such problems of mankind the solutions of which are not described in the holy Quran. So, the Quran is called the complete code and conduct of life.

In this book Maulana also explains the inner meanings of 'Kalima-e-Shahadat' and some 'Dowa' and 'Salatut-Tasbih'

which bear moral significance in a Muslim's life no doubt. I hope such an auspicious endeavor of Maulana will surely open the eye of Muslim Umma.

(Dr. M. A. Salam Al-Madani)
Asst. professor, Arabic Dept.
Rajshahi University, Rajshahi.

RAJSHAHI MEDICAL COLLEGE HOSPITAL FOREWORD

We are very much happy to write a foreword of the book on Islamic law and Bangladesh Penal code written by Mufti Allama Syed Nazrul Islam. It is a comparative study on Islamic and other man made laws. The task is not an easy one. But the Mufti has done it efficiently. For the purpose he has not counted the cost. He has gone through the Holy Quran as well as the other man made laws repeatedly. He is successful to prove the superiority of Islam over the other laws.

The book is indented for general population. Although not large and comprehensive. It may also be used for reference purposes as we think.

The Holy Quran is the complete code of human life. This plain truth is to be flourished in front of the non Muslims. Being a foreign language, English version of this book may serve the purpose even in a limited scale.

We wish and hope the wide circulation of the book. We also hope, the second edition of the book will continue to be more informative and useful to aspiring both Muslims and non Muslims who are interested in Islam and that will give them sufficient knowledge.

(Dr. Rajibul Haque) (Dr. L. Manjur) (Dr. M.S. Hossain)

M. B. B. S.

M. B. B. S.

M. B. B. S.

M. S. (E.N.T)

M.D (I.M)

M.D (I.M)

ACKNOWLEDGEMENT

With great pleasure I can not but mention that the book "Justice in the eye of Islam" written by Mufti Allama Sayed Nazrul Islam, Fandpuri, is an uncommon book No doubt in it that this book is very suitable and appropriate for a comparative study between the Quranic Law (Divine Law) and British Law. I have never seen such an important book. This book will make the readers differentiate between Islamic Law and British law clearly and effectively.

This is a great enterprise for a Moulana to write a book in English. Mufti Allama Sayed Nazrul Islam has already compiled this unique book with excellent commentary and illustration. We are highly grateful to almighty Allah to offer him extraordinary wisdom and intelligence. This enriched with all required materials. We are highly proud of him.

If the book 'Justice in the eye of Islam' is timely published, it will open the door of comparative study between the Quranic Law and the Penal Code before the general readers. Besides, it must prove that Islam is a complete code of life and The holy Quranic Law is universal and above error, meanness and injustice.

I would like to announce that this book will cause a silent revolution among the educated and interested reades.

(Md. A. Jabber)

Lecturer in English

Date : Bth February 2003

Baraigram Degree College

Baraigram, Natore.

ACKNOWLEDGEMENT

I have recently gone through the book "A comparative study of the Quranic Law (Divine Law) and Penal code" composed by valiant freedom fighter Maulana Alhaj Sayed Nazrul Islam, Faridpuri, President of Ettehadul Muslemin, Bangladesh.

The author has elaborately narrated some important Islamic judicial laws and analysed Islamic penal code. He has inserted substantial and essential Quranic Laws in a very attractive manner which, I hope, shall undoubtedly enrich this sector of education. Mufti Allama Sayed Nazrul Islam Faridpuri compiled this book with beautiful commentry on each and every aspect. I also hope that this book will be able to open up the vast field of Quranic law and the penal code before the general readers.

Mufti Sayed Nazrul Islam comes of a respectable Muslim family. His father Alhajj Sayed Bazlur Rahman was aslo an exceptionally pious and devoted Muslim. Moreover Janab Maulana Mufti has composed this book seating at the eastern side of Maszid-E-Nababi, Rawza Mobarak Sharif, Reazul Zannah and Baitul Mukaddas (Al Aksa).

I pray that may almighty Allah endow the author with the honour of being approved the book as a source of religious peace and welfare by all sorts of people. Like the author I also believe firmly that justice may never be ensured without the implimentation of the Quranic Laws. This illuminationg book is really invaluable for all sorts of readers. We are eagerly looking forward for new works from the author.

Date : 02/03/2003

(Adv. Abdur Rauf)

President Satkhira District Bar Association.

FOREWORD TO FIRST EDITION

I have gone through the book "A comparative Study of the Ouranic Law (Divine Law) A Penal Code" by important islamic Judicial Law conceptions and analyses those with the present Penal code, which I think, will knock the sleeping doors of Muslim Ummas The Holy Quran Is a complete code of life and it indicates the best way of life During the glorious A golden regime of Islam the society was ruled by the holy Quran. In this sub Continent during the Muslim regime Quranic Law had reached a higher, elevated and prosperous position and was in force till the pathetic set down of Moghol & Nawabi regime Maulana in his book again reminds us that the Ouranic law is the only law which can ensure the fair justice and administration.

In this book Maulana also explains the inner meanings of 'Kalima-e-Shahadat' and some 'Dowa' and 'Salatut-Tasbih' which bear moral significance in a Muslims life no doubt. I hope such an auspicious endeavour of Maulana will surely open the eye of Muesm Umma.

Date : 03/05/2002

(Muzibur Rahman Talukder)
Sr. Advocate & Former President
Rajshahi Bar Association Rajshahi.

FORWARD TO FIRST EDITION

"A comparative study of the Quranic Law and Penal Code' written by valiant freedom fighter Maulana Alhaj Sayed Nazrul Islam was read by me carefully I have been very much impressed and delighted as Maulana tried his best to differentiate the concept of Quranic Law and Penal Code. I am pleased to spell out that the context of this book will open avenues for readers of all walks of life to be enlightened with Quranic Law which only can help build a Society in peace and love.

Maulanas book will be able to attract the readers to extract the Islamic value from this comparative study Moreover a bunch of readers will be created in this effective step of Maulana to furnish the private, social and national life. This priceless book will be helpful to all valued readers.

I appreciate this attempt of Maulana in writing this book.

Dated : 10.02.2003

(Adv. M.M. Mujibur Rahman)

President, Khutna District Bar Association

FOREWORD TO FIRST EDITION

I have had the opportunity to go through this booklet by Moulana Syed Nazrul Islam. The booklet is on the Islamic code which is necessary for every Muslim to know and apply in his every day life. To be a true Muslim this booklet is important to read and follow. I expect wide circulation of the book.

Date : 01/11/02

(K.M. Eusuf Ali)

Vice principal

Govt. Nazrul Islam College

Sathpar, Gopalgang, Bangladesh.

FOREWORD TO FIRST EDITION

I am very much happy to write a foreword of the book "Justice in the Eye of Islam" by Allama Syed Nazrul Islam. In fact it is a comparative study on Islamic and other laws. Hopefully in this book the author discussed some important Islamic laws, conceptions and analyses those with the existing Penal Code. The author comes from a respectable Muslim family. His father Allama Syed Bazlur Rahman was an exceptionally pious & dedicated Muslim. The author has written this book sitting in Medina, Monowara & Syria during his stay there.

The Holy Quran is not a traditional religious book rather it is an endless guidance to eternal journey. In this book Allama Syed Nazrul Islam again reminds us that the Quranic law is the only law that can ensure fair justice to mankind.

Finally I would like to convey the message to the reader that the aim of this book is to create interest among the general reader. The interested reader I hope will be highly benefited.

Date : 20/03/03

(Advocate Nazrul Islam)

President

Zilla Bar Association, Jessore

Mullick Brothers
42 Banglabazar, Dhaka-1100, Bangladesh